



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MENDOCINO**



**LOCAL RULES  
EFFECTIVE JANUARY 1, 2007**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF MENDOCINO

LOCAL RULES OF COURT  
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## CHAPTER 1. INTRODUCTORY

### 1.1 Adoption of Rules

These rules are adopted by the Superior Court in the County of Mendocino pursuant to Government Code sections 68070 and 68071, and Code of Civil Procedure sections 128 and 187, and are effective January 1, 1999.

*Eff. Jan. 1, 1999.*

### 1.2 Repeal of Prior Rules

Upon the effective date of these rules, all other rules heretofore adopted by these courts shall be repealed, provided that no action theretofore taken in compliance with such rules shall be made or deemed invalid or ineffective by such repeal.

*Eff. Jan. 1, 1999.*

### 1.3 Citation

These rules shall be known and cited as the Superior Court Rules and at all times be supplementary and subject to any and all rules heretofore and hereafter adopted for the courts by the Judicial Council of California.

*Eff. Jan. 1, 1999.*

### 1.4 Construction and Application

These rules shall be liberally construed to serve the proper and efficient administration of the business and affairs of this court and to promote and facilitate the administration of justice by the courts.

*Eff. Jan. 1, 1999.*

### 1.5 Definition of Terms

The definitions set forth in the California Rules of Court apply with equal force and for all purposes to the local rules unless the context or subject matter otherwise requires. Set forth below are definitions of selected terms used in these rules:

**Court:** The word court shall mean the particular court in which a matter is pending, unless otherwise specifically noted and shall include and apply to:

- Any judge who is appointed or elected a member of this court;
- Any judge, including a retired judge, who is assigned by the Chairperson of the Judicial Council to serve this court;
- Any commissioner or referee who is appointed by the judges of this court;

- Any retired commissioner who is assigned by the Presiding Judge pursuant to Government Code section 72190 to serve the court; and,
- Any member of the State Bar of California ordered to act as a temporary judge to serve this court pursuant to Article VI, Section 21 of the California Constitution and Rule 532 of the California Rules of Court.

**California Rules of Court:** California Rules of Court mean the rules of court administration, practice and procedure adopted by the Judicial Council of California.

**Judicial Officer:** The term judicial officer includes any judge who is appointed or elected a member of this court and any commissioner or referee who is appointed by the judges of this court.

**Presiding Judge:** The word, Presiding Judge, shall mean the Presiding Judge of the courts of Mendocino County and it shall include the Acting Presiding Judge. The Presiding Judge, with the concurrence of the Executive Committee, may appoint such Assistant Presiding Judges as is deemed appropriate.

**Clerk:** The word Clerk includes the Court Executive Officer and any other duly appointed and sworn deputy clerk of the courts.

**Person:** The word person includes corporations, associations, public entities and all other entities as well as natural persons.

**Paper:** The word paper includes all documents except as otherwise provided in the California Rules of Court.

**Judgment:** The word judgment includes and applies to any judgment and to any order or decree from which an appeal lies.  
*Eff. Jan. 1, 1999.*

## **1.6 Clerks**

The Mendocino County Courts are served by a staff of court clerks under the supervision of the Court Executive Officer.  
*Eff. Jan. 1, 1999.*

## **1.7 Amendment and Repeal**

These rules may be amended by the Executive Committee of the courts after consultation with the judges of the courts in which these rules shall apply. *Eff. Jan. 1, 1999.*

## **CHAPTER 2. ADMINISTRATION OF THE COURTS; FAIRNESS; COURTROOM DECORUM**

### **ADMINISTRATION**

#### **2.1 Location**

Sessions of the court shall be held in Ukiah, Willits, Laytonville, Covelo, Fort Bragg, and Point Arena, California.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

#### **2.2 Sessions of the Court**

The sessions of the superior court are established by a Standing Order Setting Court Calendars, a copy of which is available at the Office of the Court Executive, or at the office of the clerk of a particular court. The sessions are established to provide the most efficient operation of the court for the benefit of the public and cost-savings. Counsel should be aware, however, that calendared matters or court sessions may change; if there is any question regarding scheduling of matters to be heard by the court, counsel should contact that particular court for further information.

*(Adopted effective 1/1/99.)*

#### **2.3 Holidays**

If any day on which an act is required by these rules to be done falls on a holiday as defined in Code of Civil Procedure section 134 and Government Code section 6700, the act may be performed with the same effect as if it had been performed on the required day on the next succeeding court day after the holiday.

*(Adopted effective 1/1/99.)*

#### **2.4 Presiding Judge and Assistant Presiding Judge**

The superior court shall have a presiding judge who shall be elected every 2 years by the judges of the superior court. The presiding judge, with the concurrence of the Executive Committee, may appoint such assistant presiding judges as may be deemed appropriate. The presiding judge may also appoint a presiding judge of the appellate department and a presiding judge of the juvenile court each of whom shall be a judge of the superior court.

An assistant presiding judge so designated shall assume the duties of the presiding judge in the event of the absence or incapacity of the presiding judge.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

## **FAIRNESS**

### **2.5 Duty to Prevent Bias**

To preserve the integrity and impartiality of the judicial system, each judge shall:

- a.** Insure that courtroom proceedings are conducted in the manner that is fair and impartial to all the participants.
- b.** In all judicial proceedings refrain from engaging in conduct and prohibit others from engaging in conduct that exhibits bias whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors or any other person. *(Subd. (b) amended effective 7/1/04.)*
- c.** Insure that all orders, rulings and decisions are based on the sound exercise of judicial discretion and the balancing of competing rights and interests and are not influenced by stereotypes or biases. *(Subd. (c) amended effective 7/1/04.)*

*Duty to Prevent Bias, Chapter 2.5 amended effective 7/1/04; adopted effective 1/1/99.*

### **2.6 Gender Neutral Language**

The court shall use gender neutral language in all local rules, forms and court documents and shall provide for periodic review to insure the continued use of gender neutral language. These changes will be made as local rules; forms and documents are modified for other reasons.

*(Adopted effective 1/1/99.)*

### **2.7 Complaints re: Bias or Sexual Harassment**

Court employees, attendants and officers of the court will not engage in any conduct or activity that produces or contributes to bias or sexual harassment in the court system.

Any person who observes or believes they have been subjected to bias or sexual harassment shall immediately report the incident to the court's Human Resource Manager, who shall advise the court executive officer. The Human Resource Manager or designee shall have the following duties and powers:

- a.** Investigate any complaints promptly and thoroughly.
- b.** Ensure that the complainant's rights are protected.
- c.** When appropriate, consult with attorneys and/or members of the public.
- d.** Maintain confidentiality.
- e.** Provide the court executive officer with a quarterly report on complaints received, if any.
- f.** Make recommendations for policy or procedure changes, training, and any other means that will prevent and eliminate bias and/or sexual harassment in the court system.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

## **COURTROOM DECORUM**

### **2.8 General Policy**

- a.** These rules have been adopted to foster orderly proceedings and respect for the Constitution of the United States, the Constitution of the State of California, the laws of this state, and the Superior Court.
- b.** The rules set forth herein shall apply in all superior court proceedings unless a judicial officer orders otherwise in a particular circumstance. A judicial officer, upon appropriate application in a particular case, may waive the application of any particular rule or may impose additional rules applicable to such case.
- c.** Each attorney who appears in court should:
  - 1.** Pursuant to Business and Professions Code section 6068(b) "maintain the respect due to the courts of justice and judicial officers."
  - 2.** Be polite and considerate toward opposing counsel, opposing parties, witnesses, and members of the court's staff.
  - 3.** Be familiar with the rules and guidelines set forth in this chapter as well as other applicable statutes and rules of conduct, ethics, and professionalism.

4. Make reasonable efforts to advise clients, witnesses, and others accompanying them of these rules, and make a reasonable attempt to see that such persons abide by these rules.

*(Adopted effective 1/1/99.)*

## **2.9 Attire**

All attorneys, litigants, witnesses and spectators shall be required to dress and conduct themselves in a manner consistent with the traditional dignity of the superior court.

- a. **Litigants and Attendees.** All persons in the courtroom should dress in a manner that is not offensive or distracting to others of usual sensibilities. Counsel shall so instruct parties they represent, witnesses they call and persons accompanying them. No person shall appear in court without a shirt, barefoot or with a bare midriff. The following shall not be worn in court: sunglasses, hats, shorts, tank tops, or any clothing that displays inappropriate words or pictures.

Bailiffs will remove any person from court who violates this rule. This rule does not limit the power of any judicial officer to further prescribe appropriate attire in the courtroom.

- b. **Attorneys.** Attorneys should be neatly and appropriately dressed in business attire for all court appearances. By way of example, and not by way of limitation, the court deems it inappropriate for an attorney to appear in court wearing jeans or tennis shoes or for male attorneys to be in court without a jacket and tie.

*(Adopted effective 1/1/99.)*

## **2.10 General Courtroom Behavior**

Persons in the courtroom shall not:

- a. Talk to clerks when the court is in session, except conversation that may be necessary in relation to the matter at that moment before the court.
- b. Converse with anyone in a manner that is distracting to the proceedings then before the court.
- c. Eat, drink, chew gum, or read newspapers.



- d.** Visibly or audibly display approval or disapproval, agreement or disagreement with any testimony, ruling, or statement of the court, counsel, or a witness.
- e.** Communicate in any way with a prisoner.

*(Adopted effective 1/1/99.)*

## **2.11 Communications to Court or Jury**

- a.** Counsel shall instruct their staff, the parties they represent, any associates of such parties who may attend court, and the witnesses they call that they shall have no communication with the court touching upon any subject of the pending litigation except on the record with all counsel or parties appearing in propria person present.
- b.** Counsel shall instruct the parties that they represent, any associates of such parties who may attend court, and the witnesses they call that they shall have no communication with any juror or alternate juror.
- c.** The court shall promptly disclose any violation of the rule set forth in paragraph (a) to all parties. If the court becomes aware of a violation of the rule set forth in paragraph (b), it shall promptly disclose such fact to all parties. In either event the court shall not make any such disclosure a part of the record of the case.

*(Adopted effective 1/1/99.)*

## **2.12 Telephones, Cellular Phones, and Beepers**

- a.** No one other than a judicial officer or a member of the court's staff shall use a courtroom telephone without the specific permission of the court.
- b.** Cellular phones shall not be used within the courtroom at anytime. All noise alert devices related to such cellular phones shall be turned off when in the courtroom.
- c.** All beepers and other noise alert devices shall be turned off in the courtroom.

*(Adopted effective 1/1/99.)*

### **2.13 Traversing the Well**

Persons in the courtroom should not traverse the area between the bench and counsel table, except with the express approval of the court. Counsel shall instruct their clients, witnesses they call, and persons accompanying them.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

### **2.14 Addressing the Court**

When addressing the trial judge in court, “Your Honor” is proper. When referring to the trial judge in the third person in court “the court” is proper. When addressing the trial judge in court “Judge” or “Judge (Name)” is not proper.

*(Adopted effective 1/1/99.)*

### **2.15 Examination from Counsel Table**

Counsel, and parties appearing in propria persona, shall remain at a lectern or behind the counsel table when examining a witness. During trial, counsel shall not exhibit familiarity with witnesses, parties or other counsel, nor address them by use of first names (except children).

*(Adopted effective 1/1/99.)*

### **2.16 Approaching a Witness**

Unless directed otherwise by the court, counsel need not request the permission of the court to approach a witness for the purpose of showing the witness a document or other object. Before approaching a witness for any other purpose, a party shall request permission from the court.

*(Adopted effective 1/1/99.)*

### **2.17 Stand to Object and Argue**

- a.** Counsel shall stand when addressing the court, except when stating the grounds for objection to evidence without argument thereon.

- b.** Argument, objections and requests by counsel during trial shall be addressed to the court rather than directly to adversaries.
- c.** Any request for the court reporter to read or mark the record or to “go off the record” should be addressed to the court outside the presence of the jury, and not to the reporter.

*(Adopted effective 1/1/99.)*

## **2.18 Objections**

When making an objection counsel should:

- a.** Only state the legal ground for the objection unless the court permits further comment.
- b.** Address the court, and not opposing counsel or the witness.
- c.** Not interrupt a question unless necessary to protect a client’s rights or if the partial question is patently objectionable.

*(Adopted effective 1/1/99.)*

## **2.19 Smoking**

Smoking is prohibited throughout the courthouse. Persons desiring to smoke shall do so 20 feet outside of a main entrance, exit, or operable window of the courthouse, pursuant to Government Code Section 7597. Recesses during jury deliberation will be permitted at reasonable intervals to permit smoking outside the courthouse.

*(Adopted effective 1/1/99.)*

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### **CHAPTER 3. SETTING CIVIL CASES FOR TRIAL AND FOR PRETRIAL AND MANDATORY SETTLEMENT CONFERENCES**

#### **3.1 Authority of Court Executive Regarding Settings**

The setting of cases for trial and for pretrial and mandatory settlement conferences is done by the presiding judge who has delegated initial authority in these matters to the court executive officer.

When matters are assigned for trial by the court executive officer they will be assigned to the available department.

This chapter shall not apply to actions brought pursuant to the Economic Litigation Act. (CCP 90 - 100).

*(Adopted effective 1/1/99.)*

#### **3.2 No At Issue Memorandum - Civil Cases (ACT)**

No at issue memorandum will be accepted for filing by the court except in unlawful detainer actions.

*(Adopted effective 1/1/99.)*

#### **3.3 Setting Cases for Trial**

- a.** Pursuant to rule repealed July 1, 2002 and 375, California Rules of Court, all cases shall be set for trial without a trial setting conference. Trial dates will be selected by the court executive officer who will consider the nature of the case, the Case Management Statement, the attorneys' availability calendar and the condition of the court's calendar, in an effort to select a trial date which presents no calendar conflict for any attorney who will try the case. The place of trial will be selected by the court after consideration of the convenience of the witnesses and parties as well as the availability of courtrooms. The actual setting of the case for trial will be done by a Notice of the Court.
- b.** Unlawful detainer actions shall be set pursuant to Code of Civil Procedure section 1170.5.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

### **3.4 Requests for Changes in Trial Dates**

Since trial dates are selected in a manner designed to assure that there will be no calendar conflict for any lawyer who will try the case, and this process involves the application of considerable time, effort and expense by court staff, normally no informal requests for a change in trial date will be accommodated. All requests for a change in trial date must conform to section 3.5.

All motions to vacate a scheduled trial, all motions to reschedule a trial, together with all declarations relating to such motion, shall be served upon each client of the attorney filing such document, in addition to all of the other persons required by law to be served, or have a client signed acknowledgment of the nature and effect of the motion.

*(Adopted effective 1/1/99.)*

### **3.5 Stipulations Regarding Calendared Matters**

Stipulations to vacate a matter that has been calendared or for a change of a date for a trial or other matter that has been calendared by the court are joint requests by the stipulating parties that a date be changed. The originally calendared date will not automatically be changed. The request will not ordinarily be considered by the court unless the stipulation contains a factual basis for the request and either shows proof of service of the stipulation upon the client of each party to the stipulation, or a client signed acknowledgment of the nature and effect of the stipulation. If the stipulation is that the matter be continued to a specific date, the stipulation must aver that the court executive officer has approved the availability of the proposed date.

*(Adopted effective 1/1/99.)*

CHAPTER 3  
APPENDIX  
TO  
CIVIL: PRETRIAL, TRIAL & SETTLE CONFERENCES

CHAPTER 3

SETTING CIVIL CASES FOR TRIAL

MENDOCINO COUNTY COURT RULE 3.2  
ATTORNEY CALENDAR

Pursuant to court rule 3.2, all counsel shall provide the court those dates the trial attorney(s) are unavailable for the 4th, 5th and 6th months following the month in which the Case Management Statement is filed.

Example:

In Re: Smith v. Smith, Action No. CV12345

Date at Issue: January 1, 1994

Attorney Unavailable

April 18-20

May 1-5

June 9

TRIAL ATTORNEY(S) ONLY

Name: \_\_\_\_\_ Address:

\_\_\_\_\_ Telephone:

*(Adopted effective 1/1/99.)*



## CHAPTER 4. ACCELERATED CIVIL TRIAL RULES

### 4.1 Objectives

It is the policy of the court in accordance with the Trial Court Delay Reduction Act to bring civil actions to disposition by settlement or other means as expeditiously as possible and within reasonable guidelines established by the court. The court should enforce these rules consistent with the principle that any elapsed time, other than reasonably required for pleadings, investigation, discovery and court events, is unacceptable and should be eliminated. (*Cal. Standards Jud. Admin.*, § 2.)

(Amended effective 1/1/03; adopted effective 1/1/99.)

### 4.2 ACT Rules

**a.** All general civil cases shall be subject to the Accelerated Civil Trial (ACT) Rules set forth in this chapter and the applicable provisions of the California Rules of Court.

**b.** As used in this chapter “general civil case” means all civil cases except:

Probate, guardianship, conservatorship, family law (including proceedings under the Family Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction Act; freedom from parental custody and control; proceedings and adoption proceedings), juvenile court proceedings, unlawful detainer proceedings and “other civil petitions” as defined by the judicial Branch Statistical Information Data Collection Standards. (*Cal. Rules of Court*, rule 207(b).)

**c.** To allow for the arbitration of claims, the ACT rules do not apply to a case designated by the court as an uninsured motorist case until 180 days after designation. (*Cal. Rules of Court*, rule 207(c).)

(Amended effective 1/1/03; adopted effective 1/1/99.)

### 4.3 Disposition

All general civil cases shall be classified as Plan 1 cases unless the court, on its own order or on noticed motion, reclassifies a case as a Plan 2 or 3 case or exempts a case from ACT rules pursuant to California Rules of Court, rule 209(d). All cases should be tried or otherwise disposed of within the following time limits measured from the date on which the action was first filed:

|               |                    |
|---------------|--------------------|
| Class 1 cases | Twelve months      |
| Class 2 cases | Eighteen months    |
| Class 3 cases | Twenty-four months |

The classification in cases is intended to meet the criteria established by the Judicial Council of California, Standards of Judicial Administration 2.1. These standards provide for concluding ninety percent of all cases in one year, ninety-

eight percent within eighteen months and one hundred percent within twenty-four months of the filing of the complaint.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

#### **4.4 Service of Process / Filing of Responsive Pleadings**

- a. Applicability:** This rule applies to the service of pleadings in general civil cases except for unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law. *(Cal. Rules of Court, rule 201.7(a).)*
- b. Service of Complaint:** The complaint, summons and Notice of Case Management Conference (see ACT Rule, rule 4.5(a).) must be served on all named defendants and proofs of service on those defendants must be filed within 60 days after the filing of the complaint. When the complaint is amended to add a defendant, the added defendant must be served and the corresponding proof of service must be filed within 30 days after the filing of the amended complaint. *(Cal. Rules of Court, rule 201.7(b).)*
- c. Service of cross-complaint:** A cross-complaint against a party who has appeared in the action must be accompanied by proof of service of the cross-complaint at the time it is filed. If the cross-complaint adds new parties, the cross-complaint must be served on all parties and the proof of service on the new parties must be filed within 30 days of the filing of the cross-complaint. No cross complaint may be filed by a defendant after the date that defendant's answer had been filed without leave of the court granted upon noticed motion and a hearing. *(Cal. Rules of Court, rule 201.7(b); Code Civ. Proc. § 428.5.)*
- d. Timing of Responsive Pleadings:** The parties may stipulate without leave of the court to a single 15 day extension beyond the 30 day time period prescribed for the response after service of the initial complaint. Any further extension shall require the filing of a request for extension of time to respond which sets forth a factual basis as to why a responsive pleading cannot, with due diligence, be filed. Upon filing the request for extension, the court may: (1) grant an extension of time for the filing of a response to a specified date; (2) deny the request; or, (3) set and conduct a hearing to set a date for compliance with this rule. In the event the court denies the request for extension, the court will set a date for the filing of a response. *(Cal. Rules of Court, rule 201.7(d).)*
- e. Modification of Timing; Order Extending Time:** the court, on its own motion or on application, may extend or otherwise modify the times provided in subsections (b) through (d). An application for a court order extending the time for serving a party must be filed before the time for service has elapsed. The application must be accompanied by a declaration

showing why service has not been effected, documenting the efforts that have been made to effect service and specifying the date by which service is proposed to be effected. (*Cal. Rules of Court, rule 201.7(e).*)

- f. **Due Diligence Statement:** The plaintiff and/or cross-complainant shall file a due diligence statement promptly upon service and the filing of answers by all defendants and/or cross-complainants and identified fictitiously named defendants and/or cross-defendants. The statement shall be filed no later than 60 days after the filing of the complaint or cross-complaint.
- g. **Failure to Serve:** Unless the court has granted an order extending the time to serve a complaint or cross-complaint, the failure to serve and file pleadings as required under the ACT rules may result in an Order to Show Cause re Contempt being issued as to why monetary and other sanctions should not be imposed. (*Cal. Rules of Court, rule 201.7(f).*)
- h. **Request for Entry of Default:** If a responsive pleading is not filed within the time limits specified in the Act Rules and no extension of time has been granted, within 10 days after the time for service has elapsed the plaintiff or cross-complainant must file a request for entry of default. Failure to timely file the request may result in the issuance of an Order to Show Cause re Contempt being issued as to why sanctions should not be imposed. (*Cal. Rules of Court, rule 201.7(g).*)
- i. **Default Judgment:** When a default is entered, the party who requested the entry of the default must obtain a default judgment against the defaulting party within 45 days after the entry of the default, unless the court has granted an extension of time. Failure to obtain the default judgment against a defaulting party or to request an extension of time to apply for a default judgment may result in an Order to Show Cause re Contempt being issued as to why sanctions should not be imposed. (*Cal. Rules of Court, rule 201.7(h).*)
- j. **Order to Show Cause re Contempt:** When the court issues an Order to Show Cause re contempt under the ACT Rules, responsive papers to the Order must be served and filed no less than 5 calendar days before the hearing. The responsive papers shall be either (1) those documents necessary to establish compliance with the identified ACT Rule or (2) a compliance statement explaining the reason for the failure to comply with identified ACT Rule and a proposed schedule the action required for full compliance. (*Cal. Rules of Court, rule 201.7(I).*)

(Amended effective 1/1/03; adopted effective 1/1/99.)

#### 4.5 Case Management

- a. **Notice of Case management Conference:** At the time of filing of all general civil cases, the clerk shall immediately assign a date for the initial case management conference which shall be approximately 150 days after the filing of the case. The plaintiff shall thereafter prepare a Notice of Case Management Conference, in the form set forth, and shall cause the Notice to be served on all defendants at the same time and in the same manner as the summons and complaint or petition and shall file a proof of service in compliance with ACT Rule, rule 4.4(b).
- b. **Case Management Statement:** No later than 30 calendar days before the date set for the initial Case Management Conference, all parties must meet and confer, in person or by telephone, to consider each of the issues identified in California Rules of Court, rule 212 (e) & (f). No later than 15 calendar days before the date set for the initial Case Management Conference, each party must file and serve on all other parties a Case Management Statement on the form approved by the California Judicial Council (form CM-110). (See Appendix to this Chapter 4) All applicable items on the form must be completed. In lieu of each party filing a separate Case Management Statement, any two or more parties may file a joint statement under this rule. Each party shall attach to its Case Management Statement the trial attorney's availability calendar for the fourth, fifth and sixth months following the month in which the Statement is filed. (See Appendix to this Chapter 4) (Cal. Rules of Court, rule 212 (e), (f) & (g))
- c. **Case Management Conference:** Counsel for each party and each self-represented party must appear personally unless allowed by the court to appear by telephone pursuant to California Rules of Court, rule 298 (c) (2), must be familiar with the case and prepared to discuss and commit to the party's position on each of the issues listed in California Rules of Court, rule 212 (e) & (f). At its option, the court may issue a written waiver of personal attendance at the Case Management Conference and issue a Case Management Order based solely on the Case Management Statements. (*Cal. Rules of Court, rule 212(b).*)
- d. **Case Management Order:** Following the Case Management Conference, the court shall issue a written Case Management Order setting a schedule for subsequent proceedings and otherwise providing for the management of the case. The order may include a directive on any matter listed in California Rules of Court, rule 212(i). The order issued after the Case Management Conference or review will control the subsequent course of the action or proceeding unless it is modified by a subsequent order. (*Cal. Rules of Court, rule 212 (i) & (j).*) (*Amended effective 1/1/03; adopted effective 1/1/99.*)

#### 4.6 Designation Statement

All actions subject to these rules shall be deemed to be a Class 1 cases unless otherwise requested in a designation statement by counsel or any party appearing without counsel and thereafter ordered by the court.

**a.** Each party who requests than an action be designated other than a Class 1 case shall file a designation statement at any time after the action is commenced but in no event later than the time of filing the Case Management Statement.

**b.** The designation statement shall set forth all information required therein describing the nature and complexity of the substantive and procedural issues, discovery, law and motion and any other factors effecting designation of the case.

**c.** After a designation statement has been filed all other parties who have appeared in the action may file within ten (10) days of service of the statement a Designation Statement. If a party fails to file a designation statement in response to that of another party, the court will assume that the party not filing agrees with the designation statements filed by other parties.

**d.** The designation statement shall be reviewed by the court or its staff. In the event of disagreement between the parties as to the designation of the action the court shall either issue its order designating the class of the case or it may order a hearing on the question of designation after which it shall issue its order designating the class of the case.

**e.** The court may at any time, on motion of a party, or on its own motion, modify the designation of any action.

**f.** The burden is on the party or parties proposing a higher classification to show good cause supporting the higher classification. The following characteristics will be evaluated:

- 1.** Type of action and subject matter.
- 2.** Number of causes of action or affirmative defenses alleged.
- 3.** Number of parties.
- 4.** Number of cross-complaints, type and subject matter.
- 5.** Complexity of substantive and procedural issues including issues of first impression.
- 6.** Difficulty of location and/or serving adverse parties.
- 7.** Nature and extent of discovery procedures and list of witnesses.

8. Number of expert witnesses and location of anticipated discovery.
9. Estimated length of trial or successive trials.
10. Whether some or all issues can be arbitrated.
11. Statutory priority for trial as to some or all issues.
12. Likelihood of intermediate appellate writ proceedings.
13. Amount in controversy and the type of remedy sought, including the measure of damage.
14. Pendency of other actions or proceedings, which may effect the case.
15. Nature and extent of law and motion procedures.
16. The nature and extent of injuries and damages.
17. The pendency of underinsured claims.
18. Any other factor that would affect the time for disposition of the case.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

#### **4.7 Short Cause Civil Cases**

Short cause matters are those actions wherein a jury trial has not been requested and the trial time is estimated at five (5) hours or less. All other civil cases are long cause cases. The court may order, upon the stipulation of all parties or the court's own motion, that a case is a short cause case exempted from the requirements of case management review and set the case for trial. The court may, despite the short cause nature of the case, order that the case be subject to a settlement conference, pretrial conference, or alternative dispute resolution. Further, the court may, upon review of the case management conference questionnaire, determine that a case is a short cause case and may vacate the order for the case management conference and set the matter directly for trial on the short cause calendar. If a short cause case is not completely tried within five (5) hours, the judge may declare a mistrial or, in the judge's discretion, may complete the trial. In the event of a mistrial, the case will be treated as a long cause case and must promptly be set either for a new trial or for a case management conference. (*Cal. Rules of Court, rule 214*)

To obtain an earlier or short cause trial date the parties are encouraged to submit an appropriate form of stipulation and order together with a completed case management conference questionnaire at any other time after the case is at issue.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

#### **4.8 Arbitration and Alternative Dispute Resolution**

**a. Election of Plaintiff.** Plaintiffs are encouraged to elect to arbitrate in appropriate cases pursuant to California Rules of Court, rule 1600(a) before the case management conference. The election, along with case management conference questionnaires of each party, must be filed at least five (5) calendar days before the case management conference.

**b. Stipulation to Arbitrate.** Parties may stipulate to arbitration in appropriate cases prior to the case management conference. A written stipulation to arbitrate will be deemed to be without a limit as to the amount of the award unless it expressly states otherwise.

**c. Mandatory Arbitration.** Pursuant to California Rules of Court, rule 1600 (b) (d) & (e) the court may, despite the lack of a stipulation, order that appropriate cases be submitted to arbitration.

**a. Request for Trial.** If any party has, within a timely fashion, requested that trial be set following arbitration pursuant to California Rules of Court, rule 1616, the court shall preside over the mandatory settlement conference pretrial and trial dates originally set.

*(Adopted effective 1/1/99.)*

#### **4.9 Settlement Conferences**

Any long cause case and any short cause case, at the discretion of the court, shall be set for a judicially supervised mandatory settlement conference conducted pursuant to Chapter 6 of these rules.

*(Adopted effective 1/1/99.)*

#### **4.10 Attorney's Compliance Statement**

At any time the court issues an order to show cause for failure to comply with any of these rules, the party to whom the order is directed shall file a compliance statement with the court not later than five (5) court days before the date set for the hearing for the order to show cause. The compliance statement shall include a description of the action taken in the case to date, any action that should have been taken under these rules but has not, and the reasons for failure to take such action. The statement shall include a proposed schedule of future action and the dates by which such action must be completed.

Whenever a compliance statement is required, the party required to file such statement shall expect to have monetary sanctions imposed.

Whenever a compliance statement is required, the court will issue an order approving a schedule for future action and requiring adherence thereto.

*(Adopted effective 1/1/99.)*

#### **4.11 Notification of Settlement or Stay**

- a. Notice of Settlement:** If a case is settled or otherwise disposed of, the plaintiff must immediately file written notice of the settlement or other disposition with the court and serve the notice on any arbitrator involved in the case. The plaintiff must also give oral notice to all of the above if a hearing, trial or conference is imminent.
- b. Dismissal of Case:** Except as provided in subsection c, the plaintiff must file a request for dismissal within 45 days after the date of the notice of settlement. If the request is not timely filed, the court must dismiss the case 45 days after it receives notice of settlement unless good cause is shown why the case should not be dismissed.
- c. Conditional Settlement:** If the settlement agreement conditions the dismissal upon the satisfactory completion of specified terms, the notice of conditional settlement must specify the date by which the dismissal is to be filed. If the plaintiff does not file a request for dismissal within 45 days after the dismissal date specified in the notice, the court must dismiss the case unless good cause is shown why the case should not be dismissed.
- d. Notification of Stay:** A party who has requested or caused a stay must immediately file a notice of the stay and attach a copy of the order or other document showing that the proceedings are stayed. If the person who requested or caused the stay has not appeared, the plaintiff must immediately file a notice of the stay and attach a copy of the order or other document showing that the proceedings are stayed. When a stay is vacated or no longer in effect, the party who filed the notice of stay must immediately file a notice that the stay is vacated or is no longer in effect.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

#### **4.12 Trial Setting, Settlement Conferences and Pretrial Conferences**

Trial setting, settlement conference and pretrial conferences shall be pursuant to Chapter 3, 4, 5, and 6 of these rules.

*(Adopted effective 1/1/99.)*

#### **4.13 Failure to Comply with Local Rules or Order of the Court**

In the event of any failure to comply with the Superior Court of Mendocino County, Local Rules of Court, the California Rules of Court or any order of the



court related thereto, the court may impose upon the offending party, attorney, or both, sanctions which may include, but are not limited to, requiring the filing of an attorney's compliance statement, attorney's case schedule, monetary sanctions, attorney's fees, expenses, striking pleadings, entering the default of any party, dismissal of the action, and/or contempt, and any other sanctions authorized by Government Code section 68609(d).

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

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**CHAPTER 4**  
**APPENDIX**  
**TO**  
**ACCELERATED CIVIL TRIAL RULES**

## CHAPTER 4

### ACCELERATED CIVIL TRIAL RULES

Pursuant to Rule 4.5 c 17) all counsel shall provide the Court those dates the trial attorney(s) are unavailable for the 4th, 5th and 6th months following the month in which the Case Readiness memo is filed. Where a claim of unavailability is made due to another trial counsel shall set forth the name and number of the case and the court in which the manner is pending. (See Appendix for format). Where a claim of unavailability is made or due to some other cause

Example:

In Re: Smith v. Smith, Action No. CV12345

Date at Issue: January 1, 1994

Attorney Unavailable

April 18-20

May 1-5

June 9

#### TRIAL ATTORNEY(S) ONLY

Name: \_\_\_\_\_ Address:

\_\_\_\_\_ Telephone:

The forms referred to in paragraphs 1, 2, and 3 above and attached hereto as a part of the Appendix to Accelerated Civil Trial Rules are the forms currently adopted by the Judicial Council. If the forms are revised by the Judicial Council the Appendix shall be deemed to refer to the current form whether or not these Rules or this Appendix have been modified.

*(Adopted effective 1/1/99.)*

## CHAPTER 5. CONDUCT OF PRETRIAL CONFERENCE

### 5.1 The Pretrial Conference

A Pretrial Conference may be held in any long cause on the civil active list, whether jury or non-jury, if requested by all the parties or ordered by the court, either on its own motion or the noticed motion of a party. The pretrial conference shall be attended by counsel who actually will try the case and by all unrepresented parties.

*(Adopted effective 1/1/99.)*

### 5.2 Pretrial Statements

- a. As directed by the order setting the action for pretrial conference, counsel shall file either a Joint Pretrial Statement or separate Pretrial Statements not less than seven (7) days before the date of the pretrial conference.

Pretrial statements shall be limited to ten (10) pages.

- b. Not less than fifteen (15) days before the date of the pretrial conference, counsel and all unrepresented parties shall meet and confer in good faith in order to prepare the pretrial statement or statements, to narrow down the legal and factual issues which the court will have to try, to arrive at stipulations and to attempt settlement of the action.

*(Adopted effective 1/1/99.)*

### 5.3 Form and Contents of Pretrial Statement

The pretrial statement shall state the name of the party or parties on whose behalf it is presented and set forth the nature of the action and the following matters under the following captions and in the following order:

- a. **Jurisdiction and Venue.** A statement as to whether any party disputes jurisdiction or venue and, if so, the legal and factual issues presented.
- b. **Substance of the Action.** A brief description of the substance of the claims and defenses presented and of the issues to be decided. In jury cases, this description shall be couched in impartial and non-argumentative language so that it will be suitable for reading to the jury at the outset of the trial.
- c. **Undisputed Facts.** A plain, concise statement of the facts that are undisputed. Counsel shall make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of

supporting testimony and exhibits.

- d. Disputed Factual Issues.** A plain, concise statement of all disputed factual issues.
- e. Disputed Evidentiary Issues.** A plain, concise summary of any reasonably anticipated disputes concerning admissibility of evidence.
- f. Relief Sought.** A detailed statement of the relief claimed, including a particularized itemization of any monetary damage sought.
- g. Points of Law.** A statement of the legal theory or theories of recovery or of defense and of any points of law (substantive or procedural) that are or may reasonably be expected to be in controversy, citing the pertinent statutes, ordinances, regulations, cases and other authorities relief upon. Extended legal argument shall not be included in the pretrial statement.
- h. Abandoned Issues.** A statement of all issues raised by the pleadings that have been abandoned including, for example, causes of action and affirmative defenses.
- i. Previous Motions.** A list of all previous motions made in the action or proceeding and the disposition of each.
- j. Witnesses.** A list of all witnesses likely to be called at trial, whether offered in person or by deposition, except for impeachment or rebuttal, together with a brief statement following each name, describing the substance of the testimony to be given.
- k. Exhibits, Schedules and Summaries.** A list of all documents and other items to be offered as exhibits at the trial, except for impeachment or rebuttal, with a brief statement following each describing its substance and purpose and the identity of the sponsoring witness. Only exhibits so listed will be permitted to be offered at trial except as may be otherwise provided in the pretrial order.
- l. Discovery Documents.** A list of all answers to interrogatories and responses to requests for admission that the party expects to offer at trial.
- m. Further Discovery or Motions.** Any requests for further discovery or pretrial motions.
- n. Stipulations.** Any stipulations requested or offered for pretrial or trial purposes.
- o. Amendments and Dismissals.** Any requested amendments to pleadings, dismissals, additions or substitutions of parties, or dispositions as to defaulting

parties.

- p. Settlement Discussion.** A statement summarizing the status of settlement negotiations and indicating whether further negotiations or settlement conferences are likely to be productive.
- q. Agreed Statement.** A statement whether presentation of the action or proceeding in whole or in part upon agreed statement of facts is feasible and desired.
- r. Bifurcation, Separate Trial of Issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
- s. Appointment and Limitation of Experts.** A statement whether appointment by the court of an impartial expert witness and whether limitation of the number of expert witnesses is feasible and desired.
- t. Estimate of Trial Time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulation, agreed statement of facts, expedited means of presenting testimony and exhibits and the avoidance of cumulative proof.
- u. Attorney's Fees.** A statement whether attorney's fees are sought, the legal and factual bases therefore, and the time and manner in which they are to be ascertained.
- v. Miscellaneous.** Any other appropriate comments, suggestions or information that might aid in the efficient or economical determination of the action.

*(Adopted effective 1/1/99.)*

## **5.4 Pretrial Order**

The court may make such pretrial orders at or following the pretrial conference as may be appropriate and such orders shall control the subsequent course of the action. Unless otherwise ordered the parties in all cases which are not subject to Chapter 9, Family Law Rules, shall, not less than seven (7) calendar days before the pretrial conference do each of the following:

- a.** Serve and file all motions in limine, briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues setting forth briefly the parties position and the supporting arguments and authorities, Each motion or brief shall not exceed ten (10) pages.

- b.** In jury cases, serve on counsel and lodge with the court all proposed voir dire questions. No question shall be allowed by counsel without the permission of the trial judge. It is the policy of the court to afford counsel a reasonable opportunity to question prospective jurors consistent with the circumstances of the particular case. Jury instructions and forms of verdict shall also be served and lodged; and in court trial cases, a proposed statement of decision shall be served and lodged.
- c.** Serve and file statements designating excerpts from depositions (specifying the witnesses and page and line references), from interrogatory answers and from responses to requests for admission to be offered at the trial (other than for impeachment or rebuttal).
- d.** Exchange copies of all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the trial (other than for impeachment or rebuttal). Upon request the party shall make the original or underlying documents of any exhibit available for inspection and copying.
- e.** Unless otherwise ordered the parties shall, not less than three (3) calendar days before the pretrial, serve and file all responses to motions in limine and responses or opposition, if any, to items received pursuant to paragraphs a, b, c, and d above; any such response or opposition shall not exceed five (5) pages.

*(Adopted effective 1/1/99.)*

## **5.5 Objections to Proposed Testimony and Exhibits**

Promptly after receipt of the statements and exhibits and prior to commencement of the trial, any party proposing to object to the receipt in evidence of any proposed testimony or exhibit shall advise the opposing party of such objection. The party shall confer with respect to any objections in advance of trial and attempt to resolve them. To the extent they are unable to arrive at a resolution, they shall advise the court of such objections and make reasonable efforts to present the matter to the court for a ruling in advance of trial.

*(Adopted effective 1/1/99.)*

## **CHAPTER 6. SETTLEMENT CONFERENCES**

### **6.1 Settlement Conferences**

- a.** It is the policy of this court that good faith efforts to settle civil proceedings are an essential part of the judicial process and that good faith efforts to settle shall be made in conformity with these rules.
- b.** The rules contained in this chapter are adopted to implement rule 222 of the California Rules of Court.
- c.** A party to any civil proceeding may apply to the court for a specially set settlement conference. If granted these rules shall be applicable to such settlement conference.
- d.** The failure of any person to comply with these rules, or order of the court, or failure to participate in good faith in any conference which these rules or an order of the court require, is an unlawful interference with the proceedings of the court and, unless good cause is shown, such person may be subject to sanctions in the nature of payment of reasonable expenses and attorney's fees in addition to any other sanctions permitted by law.

*(Adopted effective 1/1/99.)*

### **6.2 Settlement Conference Procedures; Duties and Requirements of Counsel, Parties and Insurers**

- a.** A settlement conference will be conducted by a settlement conference official: judge of this court, an assigned judge or a retired judge, or practicing attorney who may act as settlement conference pro tem judge.
- b.** Each party, or counsel for such party, shall be required to comply fully with California Rules of Court, rule 222 and include in the settlement conference statement each of the matters described in California Rules of Court, rule 222.

*(Amended effective 7/1/05; adopted effective 1/1/99.)*

### **6.3 Duties of Counsel Prior to Conference**

At least five (5) court days before the conference, each party, or counsel for each party, shall submit to the court and serve upon all other counsel a detailed Settlement Conference Statement. The statement will not form a part of the clerk's file.



The settlement conference statement shall describe the case and all relevant legal issues and contentions. The statement and supporting material must be adequate to advise the court of all relevant, legal and factual issues so that the settlement conference judge and those conducting the settlement conference may have sufficient information upon which a meaningful settlement conference may be had. The settlement conference statement shall not be made a part of the court's file. (Cal. Rules of Court, rule 222)

In addition to the foregoing:

- a.** Each party claiming damages in a personal injury action shall bring to the conference all reports and records of any and all examining doctors, shall include in the settlement conference statement a list of all special damages claimed and shall supply corroborating evidence to be available for examination by the settlement conference judge.

In a personal injury action, the special damages for each plaintiff should be up-to-date, listed separately, totaled and categorized as health care (including medical, hospital, ambulance and drugs) and loss of earnings, if any.

Opposing parties shall bring with them copies of all reports and records of all examining doctors employed by them or their insurance carrier, if any, who examined the plaintiff to be available for consideration by the settlement conference judge.

- b.** All parties shall organize in advance and bring to the conference such medical reports and records, and any depositions (with relevant pages and lines pre-marked) photographs, books, records, diagrams, maps, bills, contracts, memoranda and all other documents pertinent to settlement of the case for examination by the settlement conference judge.
- c.** All parties shall set forth the date, the amount and terms of the highest offer and the lowest demand made by each party. The limits of insurance coverage available to each party defendant or plaintiff.
- d.** All parties shall ascertain whether there are claims or liens which may affect a settlement, and if so, request in writing the claimants or lienholders or their representatives to attend the settlement conference. A copy of such written request shall be brought to the settlement conference.

*(Adopted effective 1/1/99.)*

## **6.4 Duties of Party at Conference**

Each party attending a mandatory settlement conference has a duty to be thoroughly familiar

with the relevant evidence available to him/her pertaining to all issues and shall be prepared to discuss all aspects of the case. In addition, the attorney for each party who has requested a jury trial in a case where the right thereto is not guaranteed by law or in a case in which special verdicts or findings of the jury will be required, shall present the form of any special verdict or interrogatories which will be required for the resolution of the case by the jury.

*(Adopted effective 1/1/99.)*

## **6.5 Notice to Court Upon Settlement; Return of Jury Fees**

Should a case settle the parties shall forthwith comply with California Rules of Court, rule 225.

Upon settlement, return of jury fees shall be governed by the provisions of Code of Civil Procedure section 631.3 and Local Rules of Court, rule 17.5. Counsel shall submit a written request for the return of jury fees on deposit with the court.

*(Adopted effective 1/1/99.)*

## **6.6 Waiver of Rules**

Waiver of the provisions of rules contained in this chapter is disfavored. However, the court may, in its discretion, waive any such provision for good cause shown; provided that absent the extraordinary circumstances, the court will not waive the provisions of subdivision 6.3.

*(Adopted effective 1/1/99.)*

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## **CHAPTER 7. PRESENTATION, FILING, SERVICE AND MAINTENANCE OF COURT PAPERS**

### **7.1 Proposed Judgments, Decrees and Orders in Uncontested Matters**

In uncontested proceedings (e.g., uncontested dissolution of marriage, default judgment and routine probate applications) an original and one copy of the proposed judgment, decree or order sought in the proceeding shall be presented to the clerk of court prior to the clerk's preparation of the calendar upon which such matter is proposed to be heard, and not less than four (4) court days before the initial date set for the hearing. The judgments, decrees and orders must be presented not later than 3:00 p.m. on the Monday before the Friday calendar. The clerk shall not place such proceeding on the calendar for hearing and shall not prepare minutes unless the original of the proposed judgment, decree or order shall have been so presented.

*(Adopted effective 1/1/99.)*

### **7.2 Filing and Service of Orders**

All written orders including orders to show cause, orders for examination of judgment debtors, temporary restraining orders and injunctions signed by a judge shall be filed forthwith and an endorsed copy shall be served upon the parties to be notified thereof and an endorsed copy bearing proof of service shall be filed not later than the fourth court day prior to the hearing. No hearing shall be calendared and no minutes shall be prepared unless the original signed by the judge is in the file.

*(Adopted effective 1/1/99.)*

### **7.3 Entry of Court Orders in Minutes**

The clerk of court shall keep in the file minutes of court orders, actions and proceedings and shall place a copy of each minute order in the file of the action in chronological order in lieu of the minute book. Prior to the destruction of such records, the clerk shall cause a copy thereof to be made as a part of the permanent records of the court.

*(Adopted effective 1/1/99.)*

### **7.4 Caption on Pleadings**

Each pleading shall contain a heading which shall contain the following information:

COUNTY OF MENDOCINO

|            |   |                            |
|------------|---|----------------------------|
|            | ) |                            |
|            | ) | _____ (1) _____.           |
| Plaintiff, | ) |                            |
| vs         | ) | No. CV                     |
|            | ) |                            |
|            | ) | DOCUMENT TITLE             |
| Defendant  | ) | [See Local Rule, rule 7.5] |

- (1) If the matter is one that prior to unification would have been filed in the municipal court, or if it is a matter described in California Rules of Court, rule 709, insert the word “Limited”; for all other matters insert the word “Unlimited”. The clerk will not accept a document for filing unless the blank is completed.

Each pleading shall comply in all respects with California Rules of Court, rules 311-319 inclusive.

*(Amended effective 7/1/02; adopted effective 1/1/99.)*

## 7.5 Headings and Footers on Papers Identifying Parties and Papers; Amended Orders

- a. Each pleading shall contain a heading which includes a brief description of the pleading and the identity of the party for whom it is filed (e.g., "Defendant Dorothy Smith's Answer to Complaint" or "Cross-Defendant Peter Ross' Answer to Cross-Complaint of Acme Corporation").
- b. Except for exhibits, each paper filed with the court shall bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer shall contain the title of the paper (examples: “Complaint”, “XYZ Corp.’s Motion for Summary Judgment”) or some clear and concise abbreviation.
- c. No clerk shall accept for filing or file any papers which do not comply with this rule and California Rules of Court, rules 311-319 inclusive.
- d. If counsel requests that the court issue, an amended or revised order the request shall be in writing and it shall specifically describe the changes in the proposed document with reference by page and line number to the original document.

*(Amended effective 7/1/02; adopted effective 1/1/99.)*

## 7.6 Headings on Motions and Orders

Each motion and order shall contain a heading which includes a brief description of the order sought or granted and parenthetical reference to the basic statute authorizing the motion or order (e.g., "Defendant Dorothy Smith's Notice of Motion for Order Striking Irrelevant Matter From Complaint", (Code Civ. Proc., § 435) or "Order Granting Plaintiff's Motion for Summary Judgment" (Code Civ. Proc., § 437(c)). No clerk shall accept for filing or file any papers which do not comply with this rule and California Rules of Court, rules 311-319 inclusive.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

## **7.6 Pleadings and Records in Eminent Domain Actions and Actions for Foreclosure of Bonds and Assessments Involving More Than One Parcel of Property**

The plaintiff's complaint shall set forth in addition to the matters required by section 1250.310 of the Code of Civil Procedure, numbers or symbols to identify each of the parcels of property. The defendant's answer, demurrer or written appearance shall set forth in the space below the number of the case and in parenthesis the parcel numbers or symbols that identify the property claimed by him or her.

- a. Copy of Pleadings.** Within ten (10) days after service of each defendant's pleadings, the plaintiff shall file a duplicate copy of his/her complaint, summons, lis pendens and other pertinent documents. A defendant who claims more than one parcel of property shall file a copy of his/her pleading for each parcel claimed by him or her. A copy of such pleading shall be filed by the clerk in the appropriate parcel file.
- b. Register.** The clerk shall include in the register opposite each named defendant the numbers or symbols that identify the property in which he or she is alleged to have an interest.
- c. Parcel Files.** The clerk shall file the pleading of each of the defendants in separate file folders. All the file folders shall have the same tab position and bear the number of the action. Following the number of the action the file folders of each defendant shall set forth the parcel numbers or symbols identifying the property claimed by said defendant. Thereafter all papers pertaining to that property shall be filed in that file folder.

*(Adopted effective 1/1/99.)*

## **7.8 Form of Documents Presented for Filing**

**Local Rules for the Mendocino Superior Court – Presentation & Filing of Court Papers**

- a.** The word "documents" as used in this rule includes all documents, except for "papers" as that term is defined in rule 201(a) of the California Rules of Court, which are offered for filing in any case in the Mendocino County Courts, including printed forms of the type furnished by the clerk of the court or promulgated by the Judicial Council of California.
- b.** All documents shall be clear and legible.
- c.** Pleadings shall be on white paper. Any material inserted into blanks on a document shall be inserted by typewriting in black or blue-black ink in a standard or customary size style, not including ornate or cursive styles and in a type size not smaller than pica (except as otherwise may be provided by statute). The court may, upon specific request, made at the time the document is offered for filing waive this requirement if the other requirements herein set forth are fully met.
- d.** A document which is produced by photocopying a printed form of the type furnished by the clerk of the court or promulgated by the Judicial Council of California shall possess the same format with respect to the face and reverse sides of the form as does the printed form from which it is copied.
- e.** A trial brief shall contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced. No trial brief shall exceed 15 pages. Any application for relief must be presented to a judge of this court and determined prior to the filing of the trial brief or memoranda. Said application must be accompanied by a declaration showing good cause. The application may be presented ex parte without compliance with Local Rule, rule 8.4 or California Rules of Court, rule 379.
- f.** A memorandum of points and authorities in support of and opposition to a motion are limited as set forth in California Rules of Court, rule 313(d). Any application for relief must be presented and determined prior to the filing of the memoranda. Said application must be accompanied by a declaration showing good cause. The application may be presented ex parte without compliance with Local Rule, rule 8.4 or California Rules of Court, rule 379.
- g.** When a request is made to the court to issue an amended order or an amendment to an order, the request shall be accompanied by a declaration setting forth the nature of the requested amendment and identifying by page and line the portion(s) of the existing order for which the amendment is requested.

No clerk shall accept for filing or file any document which does not comply with this rule; provided, the court or the clerk may, upon specific request, made at the time the document is offered for filing, waive the requirements set forth herein for a particular document.

**Local Rules for the Mendocino Superior Court – Presentation & Filing of Court Papers**

*(Amended effective 1/1/03; amended effective 1/1/02; adopted effective 1/1/99.)*

## **7.9 Presentation of Ex Parte Application**

An ex parte order will be issued only if the application is accompanied by a declaration adequate to support its issuance. An ex parte order will not be issued unless one of the following conditions exist:

- a.** Notice was given to the adverse party so that the party might oppose the application; or,
- b.** It clearly appears in the declaration that giving notice would clearly frustrate the purpose of the proposed order; or,
- c.** The applicant would suffer an irreparable injury before the adverse party could be heard in opposition; or,
- d.** It appears by declaration that no significant burden or inconvenience would result to the adverse party.
- e.** The applicant has complied with California Rule of Court, rule 379.

Such orders may be submitted to the clerk for review by the first available judge; or, when deemed necessary by the presenting party, an appointment may be scheduled with the first available judge and the attorney for such party, at which the proposed order may be presented to, reviewed and determined by the judge.

*(Adopted effective 1/1/99.)*

## **7.10 Orders for Examination**

If neither party appears, or if the moving party does not appear at the time and place of the examination the order of examination shall be considered to be discharged.

If the party to be examined fails to appear at the time and place set for said examination, a bench warrant may issue.

*(Adopted effective 1/1/99.)*

## **7.11 Order After Hearing and Notice of Entry of Judgment**

The prevailing party shall prepare orders after hearing pursuant to California Rule of Court, rule 391.

*(Adopted effective 1/1/99.)*

## **7.12 Withdrawal or Substitution of Attorney**

The Notice of Motion to be Relieved as Counsel (Civil), the supporting declaration and the order Granting Attorney's Motion to be Relieved as Counsel (Civil) shall be made on the current forms adopted for mandatory use by the Judicial Council of California. Absent special circumstances the Order shall be effective upon the filing of the proof of service of such Order upon the client.

A Substitution of Attorney (Civil) Without Court Order shall be made on the current form adopted for mandatory use by the Judicial Council of California.

All forms shall be fully completed when filed or submitted to the court.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*



## CHAPTER 8. LAW AND MOTION RULES

### 8.1 Law and Motion Department

- a. There shall be one department of the court designated to hear civil law and motion proceedings. In addition to the matters defined in California Rules of Court, rule 303, said departments shall also hear petitions for change of name, emancipation of minors, and applications for appointment of a guardian ad litem pursuant to Code of Civil Procedure section 373. The presiding judge shall determine which departments or courts shall hear petitions regarding harassment filed pursuant to Code of Civil Procedure section 527.6.
- b. Except as otherwise provided by these rules, the California Rules of Court and applicable statutes, all special requests to place a matter on the law and motion calendar, together with all supporting papers and documents, shall be filed with the clerk no later than 4:00 p.m. on the third court day preceding the calendar.
- c. At the calling of the law and motion calendar as to any matter for which an appearance is required, a failure of the moving party to appear when called may, in the court's discretion, cause the matter to be ordered off calendar.
- d. When a matter is to be dropped, counsel for the moving party shall immediately notify the clerk of the law and motion department.
- e. By stipulation and upon payment of the applicable fees the parties may continue a matter one (1) time only without the approval of the court. Except as herein expressly provided, no matter will be continued, even by stipulation of the parties, except with the approval by the court for good cause shown. If good cause is shown to the satisfaction of the court, the requesting party shall send a confirming letter to the law and motion department and all other counsel, and if it is likely that such letter will be delivered before the hearing date the requesting party in addition shall notify all other counsel or parties in pro per by telephone.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

### 8.2 Filing of Papers; Headings

- a. Prior to filing any motion, the moving party must make a reasonable and good faith attempt to resolve the matter, and if resolution is not possible, must attempt to coordinate hearing dates with any opposing parties. A declaration setting forth facts supporting such attempt or explaining why such an attempt would not be reasonable must be filed with the motion.

- b.** Failure to comply with the requirements of this rule or California Rules of Court, rule 317 concerning the time for filing and serving opposing and reply papers, in the discretion of the court may be deemed cause for acting on the matter without consideration of the document filed in violation of the rule and cause for imposing sanctions. California Rules of Court, rule 227; Code of Civil Procedure sections 177.5 and 575.2.
- c.** If proofs of service are not filed with the clerk of court within the time set forth in California Rules of Court, rule 317(b) the matter may be dropped from the law and motion calendar.

*(Adopted effective 1/1/99.)*

### **8.3 Format of Motions**

- a. Caption.** The form of the caption shall comply with Local Rule, rule 7.5 and with California Rules of Court, rule 311.
- b. Page Limit.** Memoranda of points and authorities in support of and opposition to a motion are limited as set forth in California Rules of Court, rule 313(d). Any application for relief must be presented and determined prior to the filing of the memoranda. Said application must be accompanied by a declaration showing good cause. The application may be presented ex parte without compliance with Local Rule, rule 8.4 or California Rules of Court, rule 379.
- c. Judicial Notice and Reports of Other Jurisdictions**
  - 1.** A party requesting judicial notice of material under Evidence Code section 452 or 453 shall provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party shall (a) specify in writing the part of the court file sought to be judicially noticed; and (b) make arrangements with the clerk of court to have the file in the courtroom at the time of the hearing. California Rules of Court, rule 323(b). Ordinarily such arrangements shall be made with the clerk of court at least 48 hours in advance of the hearing.
  - 2.** If counsel relies on authority other than that currently printed in the official California Reports, a legible, complete copy of such authority shall be submitted to the court and other counsel. This rule applies to federal cases from California jurisdictions, Daily Journal D.A.R. citations, Administrative Code citations, Attorney General opinions, local ordinances, etc. as well as citations to other state and federal cases. In all

other respects California Rule of Court, rule 313(e) will apply.

- d. Typing, Spacing and Exhibit Formats.** Failure to comply with California Rules of Court, rule 201(b), unless a waiver of any portion of such rule has previously been obtained as provided in Local Rule, rule 7.8(d) or otherwise, may be considered cause to decide the issue without considering the motion and grounds for the imposition of sanctions.
- e. Citations.** Citations to California cases must be by reference to the official reports and shall be governed by California Rules of Court, rules 313 (c) & (e).
- f. Affidavits and Declarations.** Any written statement purporting to set forth factual information in support of any motion, petition, or other application must affirmatively demonstrate, and not merely recite, that the party making and signing the same has personal knowledge as to the matters set forth therein. *Star Motor Imports, Inc., v. Superior Court*, (1978) 88 Cal.App.3d 201, 203-205; *Osmond v. EWAP*, 153 Cal.App.3d 842.
- g. Demurrer/Motion to Strike.** The caption must comply in particular with Local Rule, rule 7.5 and California Rules of Court, rule 325.
- h. Summary Judgment and Summary Adjudication of Issues.** All motions for summary judgment or summary adjudication of issues must conform to the requirements of Code of Civil Procedure section 437(c) and California Rules of Court, rules 342-345 inclusive. The requirements set forth in the Code of Civil Procedure and the California Rules of Court will be strictly enforced by the court.

*(Adopted effective 1/1/99.)*

## **8.4 Ex Parte Applications**

**Procedure:** All ex parte applications for temporary relief, orders to show cause, orders shortening or extending time, or other kinds of orders (except probate orders) sought in the civil law and motion department or in the family law department shall be made pursuant to California Rules of Court, rule 379.

*(Amended effective 1/1/07; adopted effective 1/1/99.)*

## **8.5 Motions to Compel Entry of Judgment**

Motions to compel entry of judgment pursuant to Code of Civil Procedure section 664.6 shall be heard in the department of the judge before whom the parties stipulated, or if only in writing, in the law and motion department.

*(Adopted effective 1/1/99.)*

## **8.6 Law and Motion After Continuance of Trial Date and After Arbitration**

The continuance of a trial date for any reason, including, but not limited to the unavailability of a court on the date set, shall not extend the date by which discovery must be completed or discovery motions heard under Code of Civil Procedure section 2024, or motions for summary judgment heard under Code of Civil Procedure section 437 (a) & (c), except by order of court upon good cause shown. After arbitration, no discovery or discovery motions shall be permitted except by order of court for good cause shown, or pursuant to Code of Civil Procedure section 2034. To obtain relief from this rule, the party must first separately notice and have heard a motion for relief for good cause shown.

*(Adopted effective 1/1/99.)*

## **8.7 Relief from Local Rules**

Relief from operation of these rules must be on prior request to the court.

*(Adopted effective 1/1/99.)*

## **8.8 Sanctions**

Failure to comply with any local rule or California Rules of Court may subject the party to sanctions pursuant to California Rules of Court, rule 227; Civil Code of Procedure sections 177.5 and 575.2.

*(Adopted effective 1/1/99.)*

## **CHAPTER 9. JUDICIAL ARBITRATION**

### **9.1 Scope, Purpose and Authority**

These rules apply to all civil actions, except those exempt from arbitration as specified in California Rules of Court, rule 1600.5. They establish a program of mandatory arbitration for Mendocino County, and are intended to produce efficiency and economy in the resolution of civil actions. Pursuant to Code of Civil Procedure section 1141.11(b), the court finds that their adoption is in the best interests of justice.

*(Adopted effective 1/1/99.)*

### **9.2 Mandatory Arbitration**

All at-issue civil actions in which no claim exceeds \$50,000 shall be submitted to arbitration.

*(Adopted effective 1/1/99.)*

### **9.3 Administration**

The court's executive officer shall be the arbitration administrator. The presiding judge, or a judge designated by the presiding judge, shall perform the functions and have the powers of an administrative committee as specified in the California Rules of Court, rule 1603.

*(Adopted effective 1/1/99.)*

### **9.4 Arbitration Panel**

An arbitration panel shall be established in the manner provided by California Rules of Court, rules 1603 and 1604. A roster of the members of the panel shall be available in the office of the arbitration administrator to encourage counsel to designate the arbitrator by stipulation pursuant to California Rules of Court, rule 1605(a). Arbitrators shall be compensated at the rate of \$150 per case, or \$150 per day, whichever is greater. (Code Civ. Proc., § 1141.18).

*(Adopted effective 1/1/99.)*

### **9.5 Arbitration Conference**

- a.** When a case has been placed on the civil active list, unless the pleadings disclose that the only relief sought by every party is equitable in nature, the arbitration administrator shall calendar the case for a conference to determine the amount in controversy and consider submission of the case to arbitration.

- b.** No later than 10 days before the conference, each party shall file with the clerk

**Local Rules for the Mendocino Superior Court – Arbitration Rules**

and serve on each other party an arbitration conference statement which shall set forth: (i) the nature of the case; (ii) the amount in controversy; (iii) whether any prayer for equitable relief is insubstantial or frivolous; and (iv) whether arbitration is not likely to reduce the probable time or expense necessary to resolve the litigation.

*(Adopted effective 1/1/99.)*

## **9.6 Arbitration Hearing List**

The arbitration administrator shall maintain an arbitration hearing list. The following matters shall be placed on the list: (i) actions submitted to arbitration by order of court or by stipulation of the parties; and (ii) actions where the plaintiff has requested arbitration pursuant to Code of Civil Procedure section 1141.2(b)(ii) and California Rules of Court, rule 1601(b).

*(Adopted effective 1/1/99.)*

## **9.7 Selection of Arbitrators**

Unless designated by stipulation of the parties, arbitrators shall be appointed in the manner provided by California Rules of Court, rule 1605. An arbitrator shall be appointed or designated no later than 30 days after submission of the case to arbitration.

*(Adopted effective 1/1/99.)*

## **9.8 Arbitration Hearings**

- a.** Arbitration hearings shall be set and conducted in the manner provided by California Rules of Court, rules 1605, 1613, and 1614.
- b.** No less than 5 days before the date fixed for commencement of the hearing, counsel for each party shall deliver:
  - 1.** To the arbitrator: copies of the party's pleadings, including complaint, cross-complaint, answer, and any amended pleadings;
  - 2.** To the arbitrator and counsel for each other party: an arbitration brief containing the following: (a) a concise statement of the facts; (b) a statement of the legal and factual contentions of the parties; and (c) a statement of damages or other relief sought by the party, including a detailed statement of the amount and elements of any claimed financial harm or loss which is the basis for the claim.
- c.** The original court file shall remain in the possession of the court's executive

officer.

*(Amended effective 1/1/03; adopted effective 1/1/99.).*

## **9.9 Awards, Dismissals and Requests for Trial**

All awards by arbitrators, all dismissals of cases on the arbitration hearing list prior to the arbitrator's award, and all requests for a trial pursuant to California Rules of Court, rule 1616(a), shall be filed with the clerk of the court and shall include proof of service of a copy thereof upon all parties and the arbitration administrator.

*(Adopted effective 1/1/99.)*

## **9.10 Settlement**

If a case is settled before the arbitration hearing, plaintiff shall promptly notify the arbitrator and the court thereof. Failure to do so may result in the imposition of costs or sanctions, including but not limited to, payment of the amount of the arbitrator's fee.

*(Adopted effective 1/1/99.)*

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## CHAPTER 10. CRIMINAL RULES

### 10.1 Applicability of Chapter

This chapter applies to all criminal proceedings.

*(Adopted effective 1/1/99.)*

### 10.2 Accusatory Pleadings

- a. Multiple Defendant Cases.** Where codefendants are charged jointly in a complaint, information or indictment, a separate file folder shall be prepared and maintained for each codefendant. The District Attorney shall present for filing a duplicate original of the accusatory pleading for each codefendant so charged, and also shall provide sufficient copies for distribution to all codefendants at the time of arraignment.
- b. Filing of Complaints.** Except as ordered upon a showing of good cause, the complaint shall be presented to the clerk for filing not later than (i) 3:00 p.m. on the day before the defendant's first appearance, if the defendant is in custody; or (ii) 3:00 p.m. of the second calendar day preceding the date of first appearance, if the defendant is not in custody. The district attorney shall provide a copy of the complaint for distribution to the defendant at the time of arraignment.
- c. Filing of Information and Indictment.** Except as ordered upon a showing of good cause, the information or indictment shall be presented to the clerk for filing not later than 12:00 noon on the day before defendant's first appearance for arraignment on the Information.

*(Amended effective 7/1/05; Adopted effective 1/1/99.)*

### 10.3 Arraignment

- a. Procedure.** The arraignment, whether on a complaint or an information, shall be completed and a plea entered on the first day that the arraignment is on calendar, unless the court orders otherwise. When the case is called for arraignment, counsel for the defendant shall announce whether or not the defendant waives a reading of the accusatory pleading and waives advisement of legal rights.

At the time of the first arraignment the district attorney shall make available to the defense counsel and to the court a copy of the police report unless it has already been so provided. The arraignment shall be completed and a plea entered on the first day that the arraignment is on calendar, unless the court orders otherwise.



- b. Reservation of rights.** Entry of a plea to either a complaint or an information shall not be deemed a waiver of the right to demur or to make any other prehearing or pretrial motions. It is the desire of the court to obtain the defendant's plea at the earliest time and to defer other pretrial matters until after the arraignment.

*(Adopted effective 1/1/99.)*

## **10.4 Motions to Suppress Evidence**

- a.** Where the defendant is charged only with misdemeanors, the motion to suppress evidence shall be made and heard before trial at a special hearing. Penal Code section 1538.5(g). The notice of motion shall be in writing and shall be accompanied by points and authorities. Unless otherwise ordered or specifically provided by law, the motion shall be served and filed at least ten (10) calendar days before the hearing; all papers opposing the motion shall be filed at least five (5) calendar days before the hearing; and, all reply papers shall be filed at least two (2) court days before the hearing.
- b. Preliminary Hearing.** A suppression motion made at a preliminary hearing shall be made in compliance with Penal Code section 1538.5(f).
- c. Post Preliminary Hearing.** A motion made after the preliminary hearing shall be made in compliance with Penal Code section 1538.5(i).

All motions to suppress evidence pursuant to Penal Code Section 1538.5, and all motions to dismiss pursuant to Penal Code Section 995 shall be calendared no later than five court days before trial.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

## **10.5 Discovery**

Discovery in criminal actions is reciprocal in nature and is governed by Penal Code sections 1054 through 1054.7. There shall be a standing order in each criminal action requiring all parties and their attorneys to comply with Penal Code sections 1054-1054.7. The order is deemed to have been made and communicated to all counsel at the time of arraignment. Before a party may seek court enforcement of any of the disclosures required by law, the party shall make an informal request of opposing counsel for the desired materials and information in the manner required by Penal Code section 1054.5(b). Failure to make such request shall be grounds for denial of a discovery motion. Informal requests should be presented to opposing counsel in writing.

Motions for discovery shall be focused upon specific items which remain in dispute after presentation of informal requests. “Boilerplate” discovery motions are disfavored. Counsel shall meet and confer before the hearing of any discovery motion in a good faith effort to resolve or narrow the disputed issues.

*(Adopted effective 1/1/99.)*

## **10.6 Transcripts of Taped Statements**

The proponent of any sound recording or taped statement shall cause accurate transcription of the recording to be made in a typewritten format. Any transcription shall be lodged with the court and served upon opposing counsel before the commencement of trial in accordance with statutory discovery procedure.

*(Adopted effective 1/1/99.)*

## **10.7 Pre-Preliminary Hearing Conference**

For all felony charges a pre-preliminary hearing conference date shall be set. At the conference all counsel who will participate in the preliminary hearing shall be present. Counsel are expected to have discussed the case among themselves and exchanged offers with a view toward resolving the matter prior to preliminary hearing. Should the case not settle at the pre-preliminary hearing conference, the prosecution shall provide the court with the name of the attorney who will conduct the preliminary hearing on behalf of the people and shall provide a reliable time estimate.

Both counsel for the people and for the defendant shall inform the court of any special needs, such as interpreters or appointment of counsel for witnesses, that are needed for the preliminary hearing.

*(Adopted effective 1/1/99.)*

## **10.8 Preliminary Hearing**

At the discretion of the court, and as permitted by law, the preliminary hearing shall also constitute a violation of probation hearing for any trailing probation matter.

*(Adopted effective 1/1/99.)*

## **10.9 Trial Setting**

- a. Misdemeanor.** After a meaningful attempt is made to resolve the case at arraignment trial dates shall be set within the statutory time limits unless time is waived. If time is waived counsel are encouraged to discuss mutually acceptable trial dates.

- b. Felony.** Upon entry of the defendant's plea, the court shall set dates for trial and pretrial conference. The trial shall be set within 60 (sixty) days from the filing of the information unless the court lengthens the time on a showing of good cause as prescribed in Penal Code section 1050, or upon a time waiver personally entered by the defendant and with the concurrence of the prosecution.

Unless otherwise ordered, all pretrial motions shall be noticed in writing with a date obtained from the court clerk. Counsel shall provide the clerk with a description of, and a reliable time estimate for, any anticipated motions. All papers pertaining to motions shall be served and filed in compliance with California Rules of Court, rule 4.111.

In order to place a matter on calendar, counsel must provide five (5) court days written notice to the court and opposing counsel by filing a Request to Place Matter on Calendar with the court clerk's office, along with supporting documents. Any Request to Place Matter on Calendar for emergency matters that need to be heard sooner than the five (5) day notice requirement requires a Declaration in Support of Order Shortening Time and an Order Shortening Time.

The only exceptions to the five day rule are the following:

1. Motion to Continue (Penal Code Section 1050);
2. Filing of Conflict of Interest Papers;
3. OR/Bail Motion;
4. Consolidation.

*(Amended effective 1/1/07; amended effective 7/1/04; adopted effective 1/1/99.)*

## **10.10 Pretrial Conference**

At the time the defendant's not guilty plea is entered, the case shall be set for pretrial conference at the discretion of the court. Normally, pretrial conferences are set two weeks before the trial date, and if not settled on that date, are continued one week for further pretrial and readiness conference.

Before the conference, counsel shall confer among themselves, their clients and any alleged victims or law enforcement personnel in a good faith effort to achieve resolution of the case without trial.

At that conference counsel for the people and for the defendant will be expected to advise the court either that (a) the defendant desires to change his/her plea to one that is acceptable to the people, or that (b) there is no possibility of a disposition of the case without trial.

The conference will be attended by those lawyers who will try the case. If the case does not settle, counsel shall inform the court of the time estimate for trial and any special requirements that would affect the conduct of the trial.

*(Adopted effective 1/1/99.)*

### **10.11 Trial Conduct**

The conduct of the trial shall be left to the discretion of the trial judge. However, counsel will be required to comply with standard courtroom protocol and dress appropriately.

As in any hearing counsel should not interrupt opposing counsel except to lodge an appropriate objection. All objections and comments must be addressed to the court, and not to opposing counsel. Permission must be sought to approach any witness on the stand. Counsel will refrain from making derogatory remarks about opposing counsel, and will otherwise be expected to handle himself/herself in a professional manner at all times.

Trial counsel shall give the trial precedence over other pending matters in other courts.

Use of the in limine conference prior to jury selection shall not be used as a further pretrial conference, except that pleas may be taken during said hearing on dispositions already negotiated between the parties.

*(Adopted effective 1/1/99.)*

### **10.12 Sentencing**

When a case is called for sentencing, defense counsel shall announce whether (a) defendant has received the probation report in a timely fashion; (b) defendant waives arraignment for sentence; and (c) there is any legal reason why judgment should not be pronounced.

Absent a showing of good cause, the court will not consider letters or other written submission which are not served on opposing counsel and lodged with the court, to be placed in defendant's file by 2:30 p.m. on the day before the hearing.

A defendant should expect to be remanded to the custody at the time set for sentencing where (a) defendant has failed to make or keep an appointment to be interviewed by the probation officer; or (b) the court imposes a prison sentence.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

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**CHAPTER 11. TELEPHONIC APPEARANCE  
(Civil and Criminal)  
and  
FACSIMILE FILING**

**11.1 Telephonic Appearance**

**a. Program Overview**

1. The Mendocino County Superior Court provides a procedure for telephonic appearance by attorneys in appropriate cases and situations as an alternative to personal appearance. CourtCall, LLC is the provider of services and support relative to the telephonic appearance procedure. All telephonic appearances are fully voluntary and no attorney is required to make a telephonic appearance or use the services of CourtCall.
2. Hearings are conducted in open court or in private, as the court may from time to time direct. Attorneys making telephonic appearances shall call a designated toll free teleconference number a few minutes before the calendar is scheduled to be called to check in with the clerk. After checking in attorneys shall remain on the courts speakerphone. Attorneys not participating telephonically appear in person.
3. Telephonic appearances are scheduled, in writing, in advance, by counsel serving on all other counsel and pro-se parties and delivering (via fax, mail, or personal delivery) to CourtCall, LLC, not less than five court days prior to the hearing date, a request for telephonic appearance form and by paying a fee of \$55 for each CourtCall appearance.

**b. Participation in Telephonic Appearances**

**1. Matters Not Suitable for Telephonic Appearance**

- a. Subject to the court's right to amend this list, the following matters are currently deemed unsuitable for telephonic appearances.

**Civil**

1. Mandatory settlement conferences;
2. Ex parte applications;
3. Hearings at which oral testimony may be presented;
4. Hearings in which oral argument is anticipated to exceed 15 minutes;
5. Judgment debtor examinations.

**Criminal**

1. Preliminary hearings;
  2. Trials;
  3. Any other evidentiary hearings.
- b.** The court reserves the right, at any time, to reject any request for telephonic appearance. When the court rejects a request, it shall order a refund of deposited telephonic appearance fees and notify CourtCall, LLC.
  - c.** The court shall also reserve the right to halt the telephonic hearing on any matter and order the attorneys to personally appear at a later date and time, in which case no refund is permitted.
  - d.** If a matter is continued prior to the actual hearing date, the prior filing of a request for telephonic appearance form shall remain valid for the continued date of the hearing provided the attorney notifies CourtCall, in writing, of the continuance. There are no refunds for matters which go "off calendar".
  - e.** Existing rules and procedures regarding the making of the record by a court reporter or electronic device or obtaining a transcript after the hearing shall apply to hearings at which telephonic appearances are made.

**2. Attorneys**

- a.** Attorneys electing to make a telephonic appearance shall serve on all other parties in the case the request for telephonic appearance form, fax a copy of the form to CourtCall, LLC and pay the telephonic appearance fee in the method prescribed, not less than five court days before the hearing date.
- b.** When the request for telephonic appearance is made at the same time as the filing of the hearing document or response, in addition to the request for telephonic appearance form, the words "Telephonic Appearance Requested" shall be printed below the department, date, and time of the hearing on the first page of the papers filed with the court.

### **3. Appearance Procedure**

- a.** An attorney making a telephonic appearance shall:
  - 1.** Eliminate to the greatest extent possible all ambient noise from the attorney's location;
  - 2.** Be required, during the attorney's appearance, to speak directly into a telephone hand set;
  - 3.** Not call in via pay phones, cellular or cordless telephone devices or via a personal computer.
- b.** An attorney making a telephonic appearance shall call the court's designated toll free teleconference line approximately 5 minutes prior to the scheduled hearing time and check-in with the clerk. An attorney calling after the check-in period shall be considered to be late for the hearing and shall be treated by the court in the same manner as if the attorney had personally appeared late for the hearing.
- c.** An attorney appearing telephonically shall state his or her name for the record each time the attorney speaks and shall participate in the appearance with the same degree of courtesy and courtroom etiquette as is required for a personal appearance. An attorney shall not utilize the "hold" button, as it is not within the policy of the court to wait for an attorney to rejoin the line.



- d. Criminal Proceedings:** All of the above rules apply in criminal proceedings except to the extent modified by this subdivision (d). Telephonic appearances are specifically deemed appropriate for bail reduction hearings, motions and sentencing hearings.

**1. Request for Telephonic Hearing Form.** In order to participate in a telephonic hearing, defense counsel shall have first faxed to CourtCall, no less than five court days prior to the scheduled arraignment or hearing date, a request for telephonic appearance form provided by CourtCall, unless counsel has been retained less than five days prior to the arraignment date, or in the event of scheduling conflicts or emergencies. In such a case, counsel may submit the form and payment to CourtCall within the five day period prior to the hearing date, but in no case later than 12:00 p.m., on the court day prior to the hearing. The submission of the form shall be accompanied by a payment of the appropriate fee, by check or credit card.

**2. In Custody Cases.** In all misdemeanor and felony cases in which the defendant is in custody, and counsel wishes to make a telephonic appearance he or she must first obtain the approval of the defendant. By filing the request for telephonic appearance, counsel shall be deemed by the court to have obtained approval of the client. Counsel's appearance will then proceed as in cases where the defendant is not in custody.

In all custody cases in which the defendant will be present in a holding area or in the courtroom when the case is called, the defendant will be permitted to hear his attorney's telephonic request for a continuance, and at the time will be asked whether or not he/she joins in the request. If the client does not agree to the requested continuance, then counsel will be ordered to appear in court as soon as possible.

**3. Discovery.** It is understood that counsel will normally obtain a copy of the complaint, police report, and other

discovery materials from the district attorney at the time of an arraignment. In all cases in which counsel has appeared at the arraignment by way of a telephonic appearance, it will be the responsibility of counsel to obtain discovery from the district attorney as soon as possible. In any event, counsel shall make arrangements to obtain all discovery from the district attorney prior to the next scheduled court appearance. A further continuance of the arraignment will not be permitted on the sole ground that counsel did not obtain discovery by the time of the arraignment, if said discovery was available.

- 4. Failure to Appear.** In any case in which a defendant, through his/her counsel, has requested a telephonic appearance and the attorney fails to appear (either telephonically or in person) the matter will be treated as a nonappearance.
- 5. Felony Cases.** Telephonic appearances shall be available in all felony cases where the defendant expressly agrees in advance that counsel can appear telephonically. Telephonic appearances in felony cases shall occur only in those cases where the defendant has previously assured counsel that he or she can and will be present in court at least ten minutes prior to the time of the hearing. In those cases where the defendant is present, the court will first inquire as to whether the defendant agrees to the telephonic appearance of counsel. If the defendant so consents, the arraignment or motion to continue shall be heard. If the defendant does not consent, then defense counsel shall be ordered to appear immediately in court, or to make arrangements for other counsel to appear on his or her behalf. In those cases where defense counsel has submitted a request for a telephonic appearance and the defendant has not appeared in court at the time of the scheduled hearing the matter will be treated as a nonappearance.
- 6. Announcement of Readiness for Trial; Telephonic Hearing Request.** Once counsel for all parties have announced ready for trial, as a result of the lack of an

available trial court on that date, a case may trail to a new date. In such instances it is common for the case to trail to a new date within the approved trailing period. The court acknowledges that in such circumstances the only purpose served by defense counsel appearing in court is to announce ready for trial and to be ordered to return to court on a specific date within the trailing period. Therefore, where it is anticipated by counsel that after announcing ready for trial his case will be trailed to a new date in the same court, counsel may request a telephonic appearance where counsel intends to announce ready for trial and expects to trail to a new date selected by the court.

**7. Cases Involving More Than One Defendant.**

Telephonic appearances are permitted in cases involving more than one defendant. In such cases counsel shall, whenever possible, first notify all co-counsel of his intention to make a telephonic appearance and secure their agreement. All counsel should agree on the next court date, and so inform the court at the time of the hearing. Counsel making the telephonic appearance should also request that co-counsel either appear in court at the time of the hearing, or make arrangements to stand in for co-counsel at that time. In all cases in which counsel has not secured the prior agreement of co-counsel, and such counsel are not present at the time of the court retains the discretion to order counsel to appear in person at an appropriate time when all counsel can appear.

In cases in which counsel is unaware of the existence of co-defendants (such as an initial arraignment), counsel will assume the risk that the court may inform counsel of the existence of other defendants, and either require counsel to appear personally, or have another attorney or co-counsel appear on his or her behalf at second call.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

**11.2 Facsimile Filing**

This rule is adopted in accordance with the provisions of rule 2001, et seq., of the California Rules of Court, and applies to civil, probate, and family law proceedings, with

the exception that wills, codicils, bonds or undertakings shall not be filed by facsimile transmission. A document that is to be issued by the court (including, but not limit to, a summons, letters of administration, letters testamentary, and a writ of execution) shall not be sent to the court by facsimile transmission.

**a. Definitions.** As used in this rule, unless the context requires otherwise:

1. “Facsimile transmission” means the transmission of a copy of a document by a system that encodes a document into electrical signals, transmits such electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.
2. “File” or “filing” means the facsimile transmission of a document to a fax filing agency for filing with the court.
3. “Fax” is an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.
4. “Fax filing agency” means an entity that receives documents by fax for processing and filing with the trial courts. An attorney or law office may act as a fax filing agency, for the attorney, the law office or others.

**b. Compliance with California Rules of Court, rules 201 and 501, and the Local Rules of Court**

1. A fax document shall comply with rule 201 and 501 of the California Rules of Court and all applicable rules of this court.
2. An exhibit that exceeds 8 1/2 by 11 inches shall be reduced to 8 1/2 by 11 inches before it is transmitted. The court may require the party to file the original of an exhibit that has been filed by fax.
3. Any document which contains an exhibit which cannot be accurately transmitted by fax shall not be filed by fax.

**c. No Direct Transmission for Filing.** Facsimile produced documents may not be transmitted for filing directly to any fax machine owned or operated by the court or the clerk’s office. In order to be filed with the court, all facsimile produced documents must be present for filing at the filing window or by mail. All requested fees must be paid at the time of filing.

- d. Quality of Facsimile Produced Documents.** In order to be filed with the court, all facsimile produced documents must be produced on plain 8# bond paper by laser printer or better quality technique, and in terms of legibility, quality of paper and permanence must be of equal or better quality than non facsimile produced documents.
- e. Fax Filing Agency.** A party may transmit a document by fax to a fax filing agency for filing with the trial courts. The fax filing agency acts as the agent of the filing party and not as an agent of the court.
- f. Duties of the Fax Filing Agency.** A fax filing agency that receives documents for filing shall:

  - 1. Prepare the documents so that the documents comply with rule 201 and 501 of the California Rules of Court and any other requirements for filing with this court.
  - 2. Take the documents to the court.
  - 3. Place the words “Filed by fax by,” followed by the name of the agency, at the bottom of the last page of the document.
  - 4. File the document with the court.
  - 5. Pay any applicable filing fee.
- g. Requirements for Advance Arrangements.** A fax filing agency shall not be required to accept papers for filing unless appropriate arrangements for payment of filing fees and service charges have been made by the transmitting agency before the papers are transmitted to the fax filing agency.
- h. Confidentiality.** A fax filing agency shall keep all documents transmitted to it confidential except as provided in these rules.
- i. Certification. California Rules of Court, rule 2005(e)** “A fax filing agency, by filing a document with the court, certifies that it has complied with these rules and that the document filed is the full and unadulterated facsimile produced document received by it. No additional certification shall be required of the agency.”
- j. Multiple Facsimile Transmissions.** In the event that a facsimile produced document is transmitted for the purpose of signatures by multiple parties or for any other purpose which does not result in the modification of the

facsimile produced document originally transmitted, a certification, as required in subdivision (i) of this rule, must be provided by each person receiving the facsimile transmission.

**k. Signatures.**

1. A party who files a signed document by fax pursuant to Code of Civil Procedure section 1012.5 and these rules represents that the original physically signed document is in his or her possession or control.
2. Notwithstanding any provision of law to the contrary, including Evidence Code sections 255 and 260, a signature produced by facsimile transmission will be treated as an original.
3. Within fifteen (15) days after service of a signed facsimile filing, any other party may serve a demand for production of the original physically signed document. The demand shall not be filed with the court. Failure to serve a demand is a waiver of the right to demand production of the physically signed original.
4. If a demand for production of the original physically signed document is made, the filing party shall arrange a meeting at which the original physically signed document can be examined.

- l. Notation of Facsimile Filing.** Each facsimile filing shall include the words “by fax” or “by facsimile” on the first page, beginning at the left margin of the line immediately below the name and address of the attorney or party. If a party is represented by an attorney, the attorney shall also include his or her facsimile machine telephone number, designated as a “fax” number, as part of the attorney’s name, address, State Bar membership number, and telephone number on the document.

*(Amended effective 7/1/04; Adopted effective 1/1/99.)*

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## **CHAPTER 12. JURY RULES**

### **12.1 Request for Jury Trial in Equity Cases, Etc.**

A party desiring a jury trial where the right thereto is not guaranteed by law will be deemed to have waived a jury trial unless the party has complied with California Rules of Court, rule 377.

*(Adopted effective 1/1/99.)*

### **12.2 Verdict Forms and Interrogatories**

A party requesting a jury trial shall submit to the trial judge at the times required by these rules and in no event later than 9:30 a.m. on the first morning of trial every form of special and general verdict and every form of interrogatory which may be required for disposition of the case.

*(Adopted effective 1/1/99.)*

### **12.3 Request for Jury Instructions**

Requested jury instructions shall be delivered to the trial judge at the times provided herein, or at such other times as may be ordered by the court and in no event later than the first morning of trial. Additional supplementary instructions may be received by the trial judge at such time and on such conditions as may be just.

The request for jury instructions shall have a face sheet with the court cause and action number which will also contain a list of BAJI (California Jury Instruction, Civil) and CALJIC (California Jury Instructions, Criminal) instructions requested. Such lists shall have two columns: (1) the BAJI or CALJIC number; and, (2) the title of the instruction. Use of the Judicial Council of California, Civil Jury Instructions (2003-3004) is encouraged.

Attached to said cover sheet shall be copies of all BAJI and CALJIC instructions requested with all blanks filled in and all surplusage blocked out. All other instructions requested by a party shall be described in the cover sheet and attached thereto. All such instructions shall be in a form that may be appropriately delivered to the jury for their reference in the jury room (The instructions shall not be denominated "Plaintiff's Instruction" or "Defendant's Instruction.")

*(Amended effective 7/1/04; adopted effective 1/1/99.)*



## **12.4 Attorney Testifying May Not Argue the Case**

An attorney testifying on the merits of the case as a witness on behalf of his client shall not argue the case to the jury unless by permission of the court.

*(Adopted effective 1/1/99.)*

## **12.5 Deposit and Refund of Jury Fees**

A deposit of jury fees in the amount required by statute shall be made by the party requesting a trial by jury as provided in section 631 of the Code of Civil Procedure. In the event that a jury is not required for the trial of any case for which a deposit of jury fees has been made, the deposit will be appropriated by the clerk to the extent of the costs involved in summoning the venire and compensating members of the venire for their attendance and the remainder of the deposit will be refunded to the depositor unless the venire is used for some other case in which event the entire deposit will be refunded to the depositor.

*(Adopted effective 1/1/99.)*

## **CHAPTER 13. PROBATE RULES**

### **13.1 Applicability of Rules**

The rules stated in this chapter, as well as those stated in Chapter 7 (Presentation, Filing, Service and Maintenance of Court Papers) and as to contested matters, those stated in Chapter 8 (Law and Motion) shall govern all proceedings involving estates of decedents and guardianship, conservatorship and testamentary trusts.

*(Adopted effective 1/1/99.)*

### **13.2 Submission of Matter Without Appearance by Counsel or Witnesses**

A matter that by law may be determined by declaration, affidavit or verified pleading and without testimony may ordinarily be submitted for appropriate action by the court without appearance by counsel or witnesses provided that all necessary papers, including declarations and proposed orders must be delivered to the clerk within the time limit prescribed. The proposed orders, when delivered, shall bear the date on which the hearing is originally noticed.

- a.** All filings of probate matters setting a hearing date shall be filed no later than 1:30 p.m. of the fourth court day prior to the probate calendar. All filings for a hearing on the probate calendar presented to the clerk after 1:30 p.m. on the fourth court day prior to the probate calendar shall be calendared for the next probate calendar that is more than four court days thereafter. The clerk shall not accept any moving papers setting a hearing date less than four days from the filing date unless a signed court order shortening time is presented along with the moving papers.
- b.** Upon the call of the probate calendar as to any matter for which an appearance is required a failure of the moving party to appear when called may, in the court's discretion, cause the matter to be ordered off calendar.
- c.** When a matter is to be dropped, counsel for the moving party shall promptly notify the probate clerk.

*(Adopted effective 1/1/99.)*

### **13.3 Nonresident Personal Representative to Furnish Bond**

Notwithstanding a waiver of bond by operation of law or contained in a will, every nonresident of the State of California who is not a sole heir, and who requests independent powers, shall furnish the required statutory bond as a condition of said persons appointment as personal representative, unless a waiver of bond is filed by all of the heirs of the decedent's estate.

*(Adopted effective 1/1/99.)*

### **13.4 Certificate of Death**

In all proceedings in which the fact of death is to be determined by the court, there shall be filed with the court as an attachment to the petition or as a separate exhibit filed before the hearing a certified copy of the applicable certificate of death.

*(Adopted effective 1/1/99.)*

### **13.5 Required Form of Accounts**

All accounts filed in probate proceedings, which shall include guardianship, conservatorship and testamentary trust accounts, shall conform to California Probate Code Sections 1061-1064 as they may be amended.

*(Amended effective 1/1/02; adopted effective 1/1/99.)*

### **13.6 Appointment of Expert to Analyze Complex Accounts and Surcharge of Cost Against Representatives**

When, because of the volume or complexity of an account, an analysis thereof by the court would appear to be unusually time consuming or difficult, the court will on its own motion appoint an expert, usually a certified public accountant to analyze the account and report to the court. The compensation for such expert shall be fixed by the court and ordered paid from the assets of the estate as a cost of administration. If the court finds that the account was unnecessarily voluminous or complex the representative or the attorney, or both, shall be surcharged the amount of such compensation.

*(Adopted effective 1/1/99.)*

### **13.7 Allowance of Claims of Personal Representative**

Claims of personal representative shall be allowed pursuant to Probate Code section 9252 only upon a written motion for the allowance thereof after every person interested in the estate shall have been given notice of the hearing of said motion, in the manner provided by Code of Civil Procedure section 1013 and only after every person interested in the estate shall have been given a copy of said motion except that the court may approve such claim ex parte if it is for reimbursement for payment of funeral or burial expenses. The motion shall set forth the specific dollar amount of the claim or the specific item to which the claim refers.

*(Adopted effective 1/1/99.)*

### **13.8 Statement Regarding Bond on Inventory and Appraisal**

Counsel for the personal representative or the personal representative, if acting without counsel, will complete all appropriate statements regarding the representative's bond which are called for on the inventory and appraisal form in current use with the approval of the Judicial Council of California.

*(Adopted effective 1/1/99.)*

### **13.9 Inventory and Appraisal - Certificate Required Under Revenue and Taxation Code, Section 480**

Pursuant to Probate Code 8800(d), the inventory and appraisal shall be accompanied by a certification under Revenue and Taxation Code section 480. A certification form (Property Tax Certification) is available from the clerk's office.

*(Adopted effective 1/1/99.)*

### **13.10 Order of Probate**

No Order of Probate shall be certified unless letters have issued.

*(Adopted effective 1/1/99.)*

### **13.11 Instructions from the Court**

A Petition for Instructions made pursuant to Probate Code section 9613, et seq., or Probate Code section 10500 shall set forth the factual situation upon which the petitioner seeks instruction and it shall set forth in detail the instructions that the petitioner believes will be in the best interest of the estate and the parties interested therein.

*(Adopted effective 1/1/99.)*

### **13.12 General Instructions to Conservator/Guardian**

In all conservatorship and guardianship matters, no letters shall issue unless the conservator or guardian have executed and filed with the court General Instructions. The form of general instructions may be obtained from the clerk's office.

*(Adopted effective 1/1/99.)*

### **13.13 Duties and Liabilities Statement**

No Duties and Liabilities Statement will be accepted for filing if the social security or driver's license number is included on the statement.

*(Adopted effective 1/1/99.)*

### **13.14 Fees of Attorneys and Fiduciaries**

Refer to Chapter 19 of these rules.

*(Adopted effective 1/1/99.)*

## **CHAPTER 14. COMPROMISE OF CLAIMS OF MINORS AND INCOMPETENT PERSON**

### **14.1 Compromise of Claims**

All petitions and orders for the compromise of claims of minors or incompetent persons pursuant to Probate Code section 3500 and Code of Civil Procedure section 372, whether by way of compromise, covenant not to sue, or stipulated judgment, shall in addition to the requirements of rule 241, California Rules of Court, comply with the following rules.

- a.** The petition shall contain a full disclosure of all information, which has any bearing upon the reasonableness of the compromise and settlement, such as the sums, if any, to be paid to the other claimants in the same case.
- b.** In any case in which the court orders the sum to be received by the minor to be deposited in a financial institution, the order shall contain the further order that "A certified or endorsed copy of this order shall be delivered to the manager of said financial institution to be deposited, and that there shall be a receipt of said financial institution filed with the clerk of the department in which the compromise was approved, acknowledging receipt of both the sum deposited and said order."
- c.** The receipt of the financial institution shall set forth the name of the account, the account number, the type of account, the amount of initial deposit, the amount on deposit as of the date of the receipt, the date the account was opened. The receipt should acknowledge that "No withdrawals of principal or interest be made from said account (s) without the written order under this case name and number therefore signed by a judge and bearing the seal of said court. The monies are not the subject of escheat."
- d.** It is the duty of counsel, and if the petitioner is not represented by counsel it is the duty of petitioner, to cause the receipt described above to be filed with the court no later than fifteen (15) days after the order requiring the sum to be received to be deposited in a financial institution.
- e.** In any case where the court order was made prior to March 4, 1972, any use of or reference to the words "age of majority," "adult" "age of minority," "minor" or words of similar intent shall make reference to persons older or younger than 21 years of age, consistent with the law then in effect, provided, however, that such orders made prior to March 4, 1972 shall be subject to amendment to reflect the new age of majority where such amendment is deemed proper in the discretion of the court. In orders made for compromise on or after March 4, 1972, the age of majority shall be 18 years of age.

- f.** If no action is pending, or if an action is pending and settlement is reached before trial has commenced, a petition for compromise of the claims of minors or incompetent persons shall be filed and heard in the department regularly hearing probate matters. If a petition is presented after trial has commenced, approval of the settlement shall be made in the trial department.

*(Amended effective 1/1/00; adopted effective 1/1/99.).*

## **14.2 Attorney's Fees for Compromise**

On any application for approval of a compromise of a claim, the attorney's fees set forth herein shall be considered reasonable under normal circumstances. In computing fees on the basis of the amount of the judgment, special damages allotted to the parents and costs paid or incurred by any attorney shall be first deducted therefrom.

- a.** Settlement without commencement of a court trial, under either Code of Civil Procedure section 372 or Probate Code section 3500: 25 percent.
- b.** Recovery of judgment or obtaining settlement after court trial has commenced: 33-1/3 percent.
- c.** Settlement after filing appellant's opening brief on appeal: 40 percent.

In cases involving unusual circumstances or conditions, the foregoing fees shall be subject to variation by the court to meet such circumstances or conditions.

In actions governed by the Medical Injury Compensation Reform Act (MICRA), the fees authorized by this rule may not exceed the amount of fees permitted by section 6146(a) of the Business and Professions Code. To the extent the fees permitted by section 6146(a) exceed the fees allowed under this rule, the provisions of this rule shall prevail.

*(Adopted effective 1/1/99.)*

## **14.3 Withdrawal of Funds**

- a.** It is the duty and the policy of the court to protect the funds of minors and not to allow withdrawals except in very urgent and unusual situations. It is the duty of parents of minors to provide for their support and education. Funds belonging to minors should not ordinarily be used for such purposes. The court will never allow withdrawals for the benefit of parents or any person other than the minor.
- b.** Requests for withdrawal of funds deposited for minors and incompetent persons will be allowed only upon filing a verified petition, or ex parte application, which shall include a showing of the amounts previously withdrawn, the balance on

deposit at the time of filing said petition, a justification for said withdrawal (including the reasons why the parents or parent are unable to provide the needed funds) and the attorney's fees, if any, requested incident thereto.

- c.** The order shall fix such fees, and no other fees shall be charged. In the absence of unusual circumstances, where the attorney for the petitioner was allowed fees at the time of settlement, it is the policy of the court to consider this an incidental service for which payment has been included in the original allowance.
- d.** Any order authorizing the withdrawal of funds for the purpose of transferring said funds from one financial institution to another shall contain the language set forth in section 14.1(b) of local rules and shall further provide that the draft of the institution from which the funds are withdrawn shall be payable to the financial institution to which the funds are to be transferred for deposit in such a blocked account. A receipt from the financial institution to which the funds are transferred containing the information and language set forth in section 14.1(c) of the local rules shall be filed with the court.
- e.** Applications for withdrawal of sums shall be filed and heard in the probate department.

*(Adopted effective 1/1/99.)*

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## CHAPTER 15. FAMILY LAW RULES

### 15.1 Law and Motion

- a. Heard.** All non-Title IV-D actions, including but not limited to **Matters** orders to show cause, motions, and other requests for relief under the Family Law Act, Uniform Parentage Act, Uniform Interstate Family Support Act, Uniform Child Custody Jurisdiction actions and other domestic relations matters shall be heard on the family law and motion calendar of the superior court. All Title IV-D actions shall be calendared to be heard by the Child Support Commissioner.
- b. Meet and Confer Requirement.** Prior to a hearing on the law and motion and order to show cause calendar and the short cause calendar, counsel shall be required to meet and confer with the opposing party or his or her counsel in an attempt in good faith to resolve all issues. In the event the parties are not actually present, they shall be immediately available to their counsel for authority to stipulate to the resolution of any and all issues. All relevant documents shall be exchanged between the parties prior to or at the time of said conference. In the circumstance where both parties have previously appeared, the exchange of documents should normally take place in conjunction with the filing of the pleadings or moving papers as required by these rules, absent good cause to the contrary.

Failure to so meet and confer may result in the matter being continued or dropped from the calendar, or the rejection of documents that have not previously been exchanged, or other appropriate sanctions within the discretion of the court.

- c. Income and Expense Declaration.** No case shall be heard unless current Income and Expense Declarations in the form prescribed by rule 1285.50 of the California Rules of Court have been completed and filed by each side. A current declaration means a declaration filed within thirty (30) days of the date of the scheduled hearing. In the event there is a recent Income and Expense Declaration on file, but not within the thirty (30) day provision, and there are no changes in that declaration, a party may file a declaration under penalty of perjury ratifying said Income and Expense Declaration.

All blanks in the Income and Expense Declaration shall be filled in with the appropriate figures or the designation of n/a. The Income and Expense Declaration will be considered as received in evidence at the hearing subject to amendment and cross examination. If current documentation has not previously been provided, no less than five (5) court days before the scheduled hearing, the following documents shall be exchanged between the parties:

**Local Rules for the Mendocino Superior Court – Family Law Rules**

1. Current wage statements representing a consecutive period of at least two (2) months;
  2. Most recent Federal income tax returns and W-2 statement;
  3. If the individual is self-employed, the most recent profit and loss statement of the business or other accounting to evidence the net monthly disposable income available to said person from the business.
- d. **Court Hearing re: Income and Expense Information.** It is the intent of these local rules that both sides shall be fully informed prior to the hearing of the documents supporting the figures in the Income and Expense Declaration. Direct examination on matters covered by the Income and Expense Declaration will be heard only under exceptional circumstances within the court's discretion and normally will be limited to testimony regarding unusual items not adequately explained in the Income and Expense Declaration.

*(Adopted effective 1/1/99.)*

## **15.5 Law And Motion and Order to Show Cause Calendar; Short Cause Setting**

- a. **Moving Papers to be Filed within 15 Days of Hearing.** All original motions and orders to show cause, together with all supporting documents, including the moving party's Income and Expense Declaration, shall be filed and served at least fifteen (15) days prior to the date set for hearing unless an order shortening time has been issued.
- b. **Responsive Pleadings and Points and Authorities.** Any responsive pleadings, including the responding party's Income and Expense Declaration and points and authorities, if applicable, shall be served and filed no less than five (5) court days prior to the date of hearing. Unless good cause is shown, failure to comply will result in refusal by the court to consider such papers.
- c. **Matters Limited to a Maximum of Thirty (30) Minutes.** The matters to be heard on the family law and motion and order to show cause calendar shall be limited to a maximum of thirty (30) minutes time. Said thirty (30) minutes shall be divided up fifteen (15) minutes per side absent an agreement between the parties or counsel to the contrary. In the event a matter exceeds the allotted thirty (30) minutes duration, the court shall continue the matter to another law and motion calendar, set it for a short cause hearing, or drop it from the calendar. The court will expect counsel to give realistic and firm

time estimates so that if a matter has the potential of exceeding thirty (30) minutes, counsel will set it for a short cause hearing as provided below.

**d. Matters Exceeding Thirty (30) Minutes - Short Cause Calendar.** Matters on the family law and motion and order to show cause calendar which are estimated to exceed thirty (30) minutes, but less than two (2) hours, in duration shall be set for hearing on the short cause calendar. Following is the procedure for having such a matter placed on the short cause calendar:

1. If the moving party estimates that the matter will take more than thirty (30) minutes but less than two (2) hours, then the moving party shall file its request that the matter be placed on the short cause calendar together with the original moving papers, giving the reason and basis for the estimate that it will exceed thirty (30) minutes in duration.

Prior to filing its moving papers, the moving party shall obtain from the court clerk the next available short cause date and set the hearing for that date and time. The request for the short cause setting shall be served on the opposing party along with the other moving papers.

2. When the moving party has set a matter for hearing on the law and motion calendar and the opposing party anticipates that the hearing will take in excess of thirty (30) minutes, but less than two (2) hours, then the opposing party shall file, at least five (5) court days prior to the scheduled hearing, a request that the matter be placed on the next available short cause hearing date. The opposing party shall include the next available short cause hearing date in the request. In the event the opposing party is unable to file its request within the five (5) day deadline, the opposing party shall at the earliest opportunity notify the moving party of its intention to request the matter go to the short cause calendar.
3. Absent a stipulation between the parties, matters set for a law and motion calendar that are subsequently estimated to exceed the thirty (30) minute limitation shall remain on that law and motion calendar for the continuation or entry of temporary order pending the short cause hearing.
4. The court will expect parties and/or their counsel to exercise good faith in utilizing this procedure for short cause hearings. This includes realistic and binding time estimates on law and motion calendars so as not to exceed the thirty (30) minute limitation, as well as realistic time estimates for the short cause calendar. In the event the court determines that any party is intentionally under or over estimating the

time in order to gain advantage or cause a delay, the court shall impose sanctions on that party and/or their attorney.

**e. Temporary Support Orders**

- 1. Duration of Temporary Support Orders.** Unless otherwise specifically ordered, temporary orders for child support or spousal support shall remain in effect until the time of trial or subsequent order of the court.
- 2. Recipients of Public Assistance Benefits.** If either or both parties are receiving public assistance benefits, then that party shall serve a copy of their moving or responsive pleadings upon the District Attorney, Family Support Division.

*(Adopted effective 1/1/99.)*

### **15.3 Child and Spousal Support**

- a. Temporary/Permanent Child Support.** Temporary and permanent child support will be set pursuant to the provisions of California Family Code section 4000, et seq.
- b. Spousal Support.** Spousal support shall be determined pursuant to California Family Code section 4300. et seq.
- c. Child and Spousal Support - Last Month or Last Year as Indicia of Net Disposable Income.** In determining net disposable income, the court will normally look to current income - within the last month or so. The court will average income over several months of a year only when a party is seasonally employed, receives bonuses or commissions which cannot be predicted, or for some other reason current income is not a good indicator of income of the immediate future. Findings of fact are normally made against any party failing to document earnings by pay stubs or tax returns.
- d. Commencement Date of Payments.** Unless the court orders otherwise, the commencement date for child support or spousal support payments shall be the date upon which the motion or other pleadings requesting such payment were filed. Any payment made by one party to the other for such purpose after the date such motion or pleading is filed shall be deducted from the sum ultimately ordered to be paid for such period. To make such determination, the sum ordered for the period shall be reduced by the sum actually paid for the period. If the result is a positive number, the person ordered to make the payment shall pay the sum forthwith. If the result is a negative figure, it will

be credited against the sum owing by the obligor for the next period in which the obligor has a net sum owing. All such adjustments shall be due and payable upon the filing and serving of the order of support.

**e. Costs of Visitation - Travel Expenses**

1. Subject to paragraph (f) below, the cost of travel expenses for parental contact shall be shared equally;
2. If the income of the parties after payment of support (child and/or spousal) is substantially different, the court may adjust the above allocation to meet the parents' respective needs and ability to pay.

- f. Travel Expenses-Distant County or Out of State.** The court may order one party to pay more than his/her share of travel expenses if that party caused the need for travel expenses by moving to a distant county or state.

*(Adopted effective 1/1/99.)*

## **15.4 Ex Parte Orders**

- a. Application for Ex Parte Order; Declaration.** An ex parte order will be issued only if the application is accompanied by a declaration adequate to support its issuance. An ex parte order will not be issued unless one of the following conditions exist:

1. Adequate advance notice was given to the adverse party or their attorney of record so that party might oppose the application. Adequate advance notice if the adverse party or attorney of record is located within Mendocino County shall be defined as a minimum of 4 hours. Adequate advance notice to a party or attorney of record located out of the county shall be reasonable depending on the distance and time necessary to travel to the court;
2. It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed order;
3. The applicant would suffer an irreparable injury before the adverse party could be heard in opposition; or,
4. It appears by declaration that no significant burden or inconvenience will result to the adverse party.

- b. Order Excluding from Home.** An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other must be supported by a declaration showing immediate and serious harm, specifying in detail the time and place of any past act or acts of alleged misconduct and stating why an order shortening time would not be practicable.
- c. Order Changing Custody of Minor.** As provided by Family Code section 3064, the court will not make an ex parte order granting or modifying custody unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. In addition, the supporting declaration shall set forth, in brief, the circumstances under which the child will be placed pending hearing.
- d. Time of Ex Parte Hearing.** To obtain a date and time for an ex parte hearing call the court clerk's office. *(Subd. (d) amended effective 7/1/04)*

*(Adopted effective 1/1/99.)*

## **15.5 Child Custody Evaluations**

- a.** The following Local Rules of Court are designed to implement California Rules of Court, Rule 1257.3.
- b.** The court shall not permit a peremptory challenge of a court ordered evaluator. Any challenge for cause must be presented by noticed motion to the court within five (5) days of the appointment of the evaluator.
- c.** Any court ordered evaluator may petition the court for permission to withdraw from any particular case with notice of said request to be given to all parties of record.
- d.** If a party or his or her attorney has any complaint regarding a court ordered evaluator, he or she should bring that complaint to the attention of the court by means of writing a letter to the court or through the filing of a motion. Whether the complaint is made by letter or by motion, a copy of said letter or motion must be served by mail on all parties. The court, at its discretion, will forward the complaint to the evaluator.
- e.** No party or attorney for a party shall initiate contact with a court appointed evaluator, orally or in writing, to discuss the merits of the case without giving the other party notice and an opportunity to be present or to receive a copy of a written communication. Nothing in this Rule shall prohibit the court

appointed evaluator from contacting either party or attorney.

- f.** Upon ordering an evaluation, the court shall specify under what code section the evaluator has been appointed and the purpose and the scope of the evaluation.
- g.** Any court ordered evaluator shall adhere to the uniform standards of practice for court ordered child custody evaluations contained in California Rules of Court, Rule 1257.3.
- h.** The court shall, at its sole discretion, determine and allocate between the parties of any fees or costs or any court ordered evaluation taking all relevant evidence into consideration.

*(Adopted effective 1/1/03.)*

## **15.6 Parent's Workshop Required When Children Involved in Action**

In an action for a dissolution of marriage or legal separation where there are minor children involved in such action, and in any action to determine paternity or any action for modification of custody and visitation, each parent is required to attend a parent's workshop.

The petitioner/plaintiff should sign up to attend the workshop in conjunction with the filing of his or her initial papers. The respondent/defendant should sign up to attend the workshop as soon as practicable after being served with the papers. It is not necessary that the parents attend the same session or class.

Each parent shall contact the agency designated by the court to obtain an appointment for a parent's workshop, attend the workshop and pay all fees associated therewith. The court will require proof of satisfactory completion of the workshop. The completion or the failure to complete the workshop will be a factor that will be considered by the court in any further custody/visitation hearings.

*(Adopted effective 1/1/99.)*

## **15.7 Attorney's Fees and Costs Award Request**

In all cases where attorney's fees and costs are requested subsequent to the services rendered, counsel shall submit a declaration itemizing the fees and costs and identify the specific legal authority for the award. When fees and costs are requested pendente lite, counsel shall submit a declaration describing the anticipated services and/or cost items with reasonable particularity and shall identify the specific legal authority for the award.

*(Adopted effective 1/1/99.)*

## **15.8 Mandatory Settlement Conferences Prior to Dissolution Trial**

- a. A settlement conference will be conducted by a settlement conference official: judge of this court, an assigned judge or a retired judge, or practicing attorney who may act as settlement conference pro tem judge.
- b. Each party, or counsel for such party, shall be required to comply fully with California Rules of Court, rule 222 and include in the settlement conference statement each of the matters described in California Rules of Court, rule 222.
- c. At least five (5) court days before the conference, each party, or counsel for each party, shall submit to the court and serve upon all other counsel a detailed Settlement Conference Statement. The statement will not form a part of the clerk's file.

*(Subd (a), (b) and (c) adopted effective 7/1/05)*

- d. **Time And Place Of Settlement Conferences.** The courts shall include in the Notice of Trial, the time and place of the mandatory settlement conference and the dates that settlement conference statements are to be lodged. Unless otherwise designated or agreed upon by all parties and counsel, the settlement conference will be held in the courthouse at Ukiah. A settlement conference will not be re-set by the parties or continued without the express approval of the settlement conference official. The parties shall notify the court clerk of all changes in settlement conference dates.

The court will attempt, to the extent possible, to schedule settlement conferences involving parties and counsel from the Mendocino Coastal areas somewhere on the coast.

*(Subd adopted as subd (a) effective 1/1/99; relettered effective 7/1/05)*

- e. **Sanctions for Failure to Lodge Timely and Sufficient Settlement Conference Statement.** It is the court's intention to require substantial compliance by all parties and their counsel in the timely filing of settlement conference statements, which include all items, listed in (d) below applicable in the particular case. Failure to substantially comply with the requirements herein, shall result in sanctions, continuance of the trial date or such other action as the court deems just under the circumstances.

*(Subd adopted as subd (b) effective 1/1/99; relettered effective 7/1/05)*



- f. **Contents of Settlement Conference Statement.** Each party's settlement conference statement shall contain the following:

**1. Complete List of Each Item of Property of Value in Excess of \$1,000**

- a. Separate Property.** List each item of separate property, the date it was acquired, the basis upon which it is claimed as separate rather than community property, the current market value, the nature, extent, and terms of payment of any encumbrance against the property, the manner in which title thereto is presently vested, and the record title data.
- b. Community Property.** List each item of community property, the date it was acquired, the current market value, the nature, extent, and terms of payment of any encumbrance against the property, the manner in which title thereto is presently vested, and the record title data.
- c. Funds Held by Others.** To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust or retirement funds, the statement shall fully identify the policy or fund, including policy, serial or account numbers, the present values and basis for calculation, and any special terms or conditions known to the party imposed upon the withdrawal of such funds. If any loans exist against any of these funds, the details regarding those loans should be set forth.
- d. Tracing and Reimbursement.** If a segregation of community property and separate property interests in a single asset is to be an issue in the case, the statement shall set forth in detail, with dates, value, and dollar amounts, the transactions relevant to the tracing issue as well as the basis for computation or proration.

For reimbursement claims under Family Code section 2640, the statement shall set forth the community asset from which reimbursement is claimed, and the basis upon which it is claimed separate funds were invested into the asset, including the amounts, dates, and whether or not there are any writings between the parties evidencing an intent to waive the right of reimbursement.

- e. Claim for Reimbursement.** The statement shall include any claims for reimbursement under Family Code section 2641, to wit, community contributions to education or training, with specific dates, amounts, and nature of the contributions.

**2. Current Obligations**

- a.** Separately list all debts and obligations of the spouses which are liabilities of the community and, so far as known, debts and obligations which are alleged to be the separate liabilities of the respective spouses. Specify the identity of the creditor, the purpose for which the debt was incurred, the date upon which the debt was incurred, the balance currently due thereon, the terms of payment and the security, if any, held by the creditor.
- b.** Any party who is claiming reimbursement for payments of obligations since the date of separation shall specify creditor, the purpose for which the debt was incurred, including which party has possession of the asset, if any, for which the debt was incurred, as well as the dates and amounts of any payments for which reimbursement is sought.

- 3. Current Income and Expenses.** Specify and set forth current income and expenses by completing and filing an Income and Expense declaration in the form prescribed by rule 1285.50 of the California Rules of Court. Previously filed Income and Expense declarations shall not be considered as compliance with this requirement if any facts have changed.
- 4. Proposal for Property Division.** Prepare a proposal for equal division of community property and liabilities on the judicial council forms or other format, which provides the same information as the judicial forms.
- 5. Custody, Visitation and Support.** Specify each party's proposal as to child custody and visitation and as to amount of child support and amount and duration of spousal support.
- 6. Appraisals of Real or Personal Property.** Each party may attach to the statement a copy of an appraisal of any real or personal property by a qualified appraiser. Within five (5) days after receipt of the settlement conference statement or fifteen (15) days before trial, whichever is later, if no written demand is made to cross examine the

appraiser, the appraisal shall be deemed to have been stipulated as admissible in evidence without foundation and without the appearance of the appraiser.

## **7. Valuation of Certain Assets**

- a. Motor Vehicles.** If there is a dispute as to the value of a motor vehicle, the value will usually be fixed at the mid-point between the high and low value shown in Kelley's Blue Book, unless the circumstances show that a different valuation should be made.
- b. Unusual Assets.** When there are assets of an unusual nature such as oriental rugs, antiques, unusual jewelry, works of art, and handcrafted items, the parties prior to trial should endeavor to agree and stipulate to the use of a qualified appraiser for any such items. Preferably, this should be with the understanding that the report of the appraiser will be admitted into evidence without the necessity of the appraiser personally appearing at trial.
- c. Valuing Furniture, Furnishings and Tools.** With regard to normal furniture, furnishings and tools, the age of the items is much more important than initial purchase price or replacement cost. The test is the fair market value of the items as of the date of trial. Used furniture has a low value on the open market. If the parties are unable to agree on a division and valuation of the furniture, one option available to the court shall be the liquidation of all assets and the equal division of the proceeds from said liquidation.
- d. Personal Property Worth Less Than \$1,000.** In the event there are items of personal property worth less than \$1,000 that are not listed in the settlement conference statement but that are in dispute as to either value or disposition, each party shall have prepared for the court and opposing counsel no later than the time set for trial a list of said items of personal property including the valuation and proposed division.

- 8. Conduct of the Settlement Conference.** Counsel, together with their clients, shall be present at the scheduled settlement conference absent good cause. The parties may resolve any and/or all issues at the settlement conference. For example, the parties may agree to issues of valuation of certain assets without agreeing on the actual division of said assets.

- a. Good Faith Attempts at Settlement; Attorney's Fees.** It is the goal of the court as well as the settlement conference officials that a sincere attempt will be made by all parties and counsel to reach a resolution of the issues at the settlement conference. To the extent there are issues that remain unresolved at the conclusion, the settlement conference official may at his or her discretion note in a sealed envelope the unresolved issue and his or her recommendation to the parties for its resolution. The settlement conference official shall notify the parties during the conference of his or her intention to note a recommendation in a sealed envelope. Thereafter, if the case proceeds to trial, at the conclusion of the trial, the trial judge may consider the recommendations of the settlement conference official in conjunction with an award of attorney's fees pursuant to Family Code section 271.
- b. Pretrial Conference.** To the extent that the parties and the settlement conference official agree that a pretrial conference would be of assistance, such a conference shall be recommended/scheduled by the settlement conference official at the conclusion of said conference.

*(Subd adopted as subd (c) effective 1/1/99; relettered effective 7/1/05)*

*(Amended effective 7/1/05; adopted effective 1/1/99.)*

## **15.9 Family Law Trial Rules**

- a. Exchange of Documentary Evidence to be Used at Trial.** No less than seven (7) calendar days prior to the date set for trial, each party shall provide the opposing party or, if represented, the opposing counsel with a list of all documents and/or documentary evidence intended to be used at trial. The list shall indicate which documents have been previously provided. Copies of all documents which have not been previously provided shall be attached to the list. In the event that the documents to be used are voluminous, either side may notify the other no less than fourteen (14) calendar days prior to the date set for trial and forthwith give the opposing party the opportunity to inspect and copy the documents. Absent a showing of good cause, documentary evidence, which has not been exchanged as set forth above, shall not be offered or admitted at trial.
- b. Trial Briefs and Motions In Limine.** Unless otherwise ordered by the settlement conference official or by other court order, all parties, not less than

seven (7) calendar days before the date first set for trial, must serve and file all motions in limine, briefs on all significant disputed issues of laws, including foreseeable procedural and evidentiary issues setting forth briefly the party's position and the supporting arguments and authorities. All such papers filed in a tardy manner shall only be considered by the trial judge upon good cause shown and within his or her discretion, upon imposition of sanctions.

*(Adopted effective 1/1/99.)*

## **15.10 Family Law Facilitator**

- a. Policy.** It is the policy of the court to encourage all unrepresented parties to meet with the family law facilitator before appearing in court.
- b. Services.** The family law facilitator shall provide the following services: 1) providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child and spousal support; 2) distributing necessary court forms and voluntary declarations of paternity; 3) providing assistance in completing forms; 4) preparing support schedules based upon statutory guidelines; and 5) providing referrals to the Department of Child Support Services, Family Court Services, and other community agencies and resources that provide services for parents and children.
- c. Additional Services for Litigants and Clerk.** At the direction of the court the family law facilitator shall provide the following additional services: 1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Family Code section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority. 2) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in section 10003. 3) If the parties are unable to resolve issues with the assistance of the family law facilitator, prior to or at the hearing, and at the request of the court, the family law facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed. 4) Assist the clerk in maintaining records. 5) When so directed by the court prepare formal orders consistent with the court's announced order in cases where both parties are unrepresented. 6) Serving as a special master in proceedings and making findings to the court unless he or she has served as a mediator in that case.
- d. Additional Services to the Court and Community.** When the additional services to the litigants and the clerk have been completed, then at the direction of the court the family law facilitator may also provide the following

services: 1) Assist the court with research and any other responsibilities which will enable the court to be more responsive to the litigants' needs. 2) Develop programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court.

*(Amended effective 7/1/05; Adopted effective 1/1/99.)*

## **15.11 Miscellaneous Rules**

- a. Approval of Orders.** Absent good cause, all orders after hearing or by oral stipulation in court shall be approved as to form by opposing counsel. In the event opposing counsel has not returned an original form of order submitted to them within ten (10) calendar days of mailing, then the party submitting the order may submit a new original to the court with a declaration regarding said mailing and lack of response from opposing counsel. Failure of counsel to return such a proposed order or to communicate meaningfully with opposing counsel concerning the proposed order may be the basis for the court imposing sanctions.
- b. Continuance Fees.** A continuance fee will be charged for continuances in all family law matters, with the following three exceptions:
  - 1.** In law and motion matters, for each motion or order to show cause, one continuance (from the original date calendared) will be allowed at no charge;
  - 2.** There will be no charge for continuances of law and motion matters if the reason for the continuance is ongoing mediation;
  - 3.** When a case has been set for hearing or trial on the short cause or long cause calendar, there will be no charge for a one-time continuance if agreed upon by the parties and if the court is notified in writing at least 15 calendar days before the date set for the hearing.

*(Adopted effective 1/1/99.)*

## **CHAPTER 16. JUVENILE COURT RULES**

These local rules are intended to supplement State statutes which are principally found in the Welfare and Institutions Code. In addition, they supplement the California Rules of Court relating to juvenile court matters (see Cal. Rules of Court, rules 1400-1497).

To the extent that any of these rules conflict with either State statute or California Rules of Court, the local rule is of no legal effect.

These rules cover juvenile court law, but not juvenile traffic hearings or traffic hearing appeals.

For the authority for the creation of these rules see California Rules of Court, rule 1400(b).

These rules adopt the rule of construction and the severability of clauses in California Rules of Court, rule 1400(c) & (d).

*(Amended effective 7/1/05; adopted effective 1/1/99.)*

### **16.1 Judicial Administration**

There shall be one presiding judge of the juvenile court. The presiding judge shall be selected by the presiding judge of the superior court.

*(Adopted effective 1/1/99.)*

### **16.2 Noticed Motions and Requests to Place Matter on Calendar**

No noticed motion shall be accepted by the clerk for filing unless it is accompanied by a proof of service.

No request to place a matter on calendar, except a request to set a detention hearing, will be accepted by the clerk or placed on calendar, unless the request is submitted in writing not less than 48 hours prior to the requested hearing date. Any request submitted less than 48 hours prior to the requested hearing date, other than a request for a detention hearing, shall be accompanied by an order shortening time.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

## 16.3 Pre-hearing Discovery

**a. Timely Disclosure of Informal Discovery.** Pre-hearing discovery shall be conducted informally. Except as protected by privilege, all relevant material shall be disclosed in a timely fashion to all parties to the litigation, In re Jose Z. (1970) 3 Cal.3d 797, California Rules of Court, rule 1620. (*Subd. (a) amended effective 7/1/04.*)

**b.** *Pre-hearing discovery in delinquency matters shall be conducted in accordance with Penal Code 1054 et.seq. (Subd. (b) adopted effective 7/1/05)*

### **c. Discovery Motions**

**1. Formal Discovery.** Only after all informal means have been exhausted may a party petition the court for discovery. Any noticed motion shall state the relevancy and materiality of the information sought and the reasons why informal discovery was not adequate to secure that information. The motion shall be served on all parties at least five (5) judicial days before the hearing date. The date for the hearing shall be obtained from the clerk of the department hearing juvenile matters.

Any responsive papers shall be filed and served two (2) judicial days prior to the hearing.

**2. Civil Discovery.** There shall be no depositions, interrogatories, subpoenas of juvenile records or other similar types of civil discovery without approval of a judge of the juvenile court upon noticed motion. (*Subd. (b)(2) amended effective 7/1/04.*)

(*Subd. (b) relettered effective 7/1/05; amended effective 7/1/04.*)

**d. Requests for Transcripts.** In any juvenile case a party requesting a reporter's transcript shall apply in writing to the judicial officer who heard the matter in question.

(*Subd. (d) relettered effective 7/1/05; adopted as Subd. (c) effective 1/1/99.*)

*Chapter 6.3. Pre-hearing Discovery, subd. (b)(3) repealed effective 7/1/04; adopted effective 1/1/99.*

## 16.4 Ex Parte Orders

**a. Application for Ex Parte Order; Declaration.** An ex parte order will be issued only if the application is accompanied by a declaration adequate to support its issuance. Ordinarily, an ex parte order will not be issued unless one of the following



conditions exist: *(Subd. (a) amended effective 7/1/04.)*

- 1.** Notice was given to all counsel, social workers, probation officers, child advocates, and parents who are not represented by counsel so that party might oppose the application; *(Subd. (a) (1) amended effective 7/1/04.)*
- 2.** It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed order.
- 3.** The applicant or the child would suffer an irreparable injury before the other parties could be heard in opposition; or,
- 4.** It appears by declaration that no significant burden or inconvenience will result to the adverse parties.

**b.** The party requesting the ex parte order may apply to the clerk in the juvenile department where the matter would normally be heard for a time to submit the request.

**c.** The party requesting the ex parte orders must inform the judge that notice has been given by submitting a "Declaration Re Notice of Ex Parte Application". The Declaration shall state the names of the persons to whom notice was given, the manner of giving notice, that the persons were given a copy of the application or notice of its content, and the time that the matter would be submitted to the court, and if notice was not given to any person entitled thereto, the reason that such notice was not given. The original declaration and accompanying Application for Order must be submitted to the court clerk in the juvenile department where the matter would normally be heard.

*(Adopted effective 1/1/99.)*

## **16.5 Attendance at Hearings (Cal. Rules of Court, rule 1610)**

- a.** Unless excused by the court, each party and attorney shall attend each scheduled juvenile court hearing.
- b.** All children are entitled to attend court hearings. Every child four years or older shall be told of his or her right to attend court hearings by his or her attorney and his or her probation officer/social worker. If the child is present, the judicial officer hearing the case may view and speak with the child. *(Subd. (b) adopted*

*effective 7/1/05.)*  
*(Amended effective 7/1/05; adopted effective 1/1/99.)*

## **16.6 Pretrial Conference (No Statute) (No Court Rule)**

Pretrial conferences shall be held prior to every contested hearing, unless expressly deemed unnecessary by the judicial officer setting the contested hearing. Settlement of the case will be discussed at the pretrial conference.

*(Amended effective 7/1/04, adopted effective 1/1/99.)*

*Title: Chapter 16.6. Settlement Conference amended effective 7/1/04; adopted effective 1/1/99.*

## **16.7 Access to Courtroom by Non-Parties (Welfare and Institutions Code section 345,346,676)**

Unless specifically permitted by statute, juvenile court proceedings are confidential and shall not be open to the general public.

The court encourages interested persons to attend juvenile proceedings in order to better understand the workings of the juvenile court. The court retains the discretion to determine in each case whether any such interested party shall remain in the courtroom.

The court or its agent shall remind each such nonparty that the name(s) of parties or identifying information from any case are confidential and should not be repeated to anyone outside of the court.

*(Amended effective 7/1/04, adopted effective 1/1/99.)*

*Title: Chapter 16.7. Access to Courtroom by Non-Parties amended effective 7/1/04; adopted effective 1/1/99.*

## **16.8 Release of Information Relating to Juveniles (Welfare and Institutions sections, 827, 828; Cal. Rules of Court, rule 1423)**

**a. Discovery of Juvenile Records.** In all cases in which a person or agency seeks access to juvenile court records, including records maintained by the court clerk, the Probation Department or the Department of Social Services, Child Protective Service (hereinafter referred to as Child Protective Services), and arrest records maintained by a law enforcement agency, the person or agency shall file a petition with the judge of the juvenile court. The petition shall set forth with specificity the materials sought and the relevance of the materials to the underlying action. The petition shall be on Judicial Council form JV570, Petition for Disclosure of Juvenile Court Records or

Judicial Council Form JV575, Records of Law Enforcement, and shall be supported by a declaration of counsel and points and authorities, if necessary.

The person or agency seeking the records shall give notice to all necessary parties 5 days prior to submitting the petition for judicial review. (Cal. Rules of Court, rule 1423 (1) (d).).

In the event that the court orders an in camera review of the records the custodian of the records shall deliver to the court a photographic copy of the entire record and shall clearly note for the court the specific portions of the record to which the custodian objects disclosing together with the basis for such objection. (*Subd. (a) amended effective 7/1/05.*)

**b. Access to Medical or Psychological Records by Juvenile Hall Medical Director.** The Medical Director of Juvenile Hall or his/her designee shall be provided a copy of all medical or mental health evaluations of minors housed in juvenile hall. If the probation officer or supervising probation officer finds that the contents of a diagnostic report rendered by the California Youth Authority are relevant to the duties of the medical director, the medical director shall also be provided with a copy of that diagnostic report. Such reports and evaluations shall be used exclusively by the medical personnel in juvenile hall and shall not be released to any one other than the minor or his parent or legal guardian without court approval. (*Subd. (b) amended effective 7/1/04; adopted as subd. (c) effective 1/1/99.*)

**c. Access to Probation Department and Department of Family and Children's Services Records by Court Appointed Special Advocates. (CASA) (Cal. Rules of Court, rule 1424)**

1. For the purpose of implementing the Court Appointed Special Advocate(CASA) Program, volunteers serving in the program are considered court personnel as that term is used in Welfare and Institutes Code section 827 (a) (1) (A) . They shall have access to probation department and child protective services' files and information contained therein needed to carry out their responsibilities as court appointed advocates. (*Subd. (c)(1) amended effective 7/1/04; adopted as subd. (d)(1) effective 1/1/99.*)

2. Any release by the probation department or the child protective services pursuant to this rule of information made confidential by Welfare and Institutions Code section 10850 shall be considered a disclosure for purposes directly connected with the administration of public social services as that

term is used in Welfare and Institutions Code section 10850.

**3.** Except as contained in their court reports and in their dealing with the parties in the particular case, the advocates are prohibited from releasing any information they gain from inspection of probation files.

**d. Release of Records to Parties and Their Attorneys.** Any party or their attorney in any Welfare and Institutions Code section 300, 601 or 602 matter shall be given access (Welfare and Institutions Code section 827 (a) (1) to all records relating to the minor which are held by the court clerk. Said party or counsel shall also have the right to secure copies of such records. The party or counsel shall be responsible for paying for the cost of any copying. Further dissemination of such records is prohibited without authorization of the Court. *(Subd (d) amended effective 7/1/04; adopted as subd. (e) effective 1/1/99.)*

**e. Release of Delinquency Information to Schools (Welfare and Institutions Code section 827,[b],[2]):** *(Subd. (e) amended effective 7/1/04; adopted as subd. (f) effective 1/1/99.)*

**1.** The district attorney or probation officer may inform the superintendent of the minor's school district of attendance of the fact that a minor has been found by the court to have used, sold or possessed narcotics or a controlled substance. *(Subd. (e)(1) amended effective 7/1/04.)*

**2.** Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated.

*(Amended effective 7/1/05; adopted effective 1/1/99.)*

*Title: Chapter 16.8. Release of Information Relating to Juveniles amended effective 7/1/04; adopted effective 1/1/99.*

*Chapter 16.8 Release of Information Relating to Juveniles, subd. (b)(1) & (b)(2) repealed effective 7/1/04; adopted effective 1/1/99.*

## **16.9 Release of Information Relating to Juveniles by Law Enforcement**

Pursuant to the cases of T.N.G. vs. Superior Court 4 Cal.3d 767, and Westcott vs. County of Yuba 104 C.A. 3d 103, this rule applies to all law enforcement agencies and officials in Mendocino County:

**a. Identity of Juvenile.** Do not release your arrest reports or other information in regard to the identity of individual juveniles under the age of eighteen (18) years who are the subject of juvenile court proceedings to the press or other media or to any persons or public agency except as set forth in paragraph (b).

**b. Information re Incident.** You may release the police report or information in regard to the incident, with the exceptions noted, to:

1. The minor, if he is representing himself in a juvenile court proceeding, or to his or her attorney,
2. The District Attorney of Mendocino County.
3. The law enforcement agency of the minor's residence.
4. Other law enforcement agencies that require it for crime investigation or reporting purposes.
5. The Mendocino County Probation Department.
6. Court personnel.
7. The Mendocino County Department of Social Services, Child Protective Services.
8. The parents or legal guardian of the minor, unless there is a reference to another minor in the report. In that situation, the request must be approved by the juvenile court.
9. The school attended by the minor.
10. Victims of juvenile crime. They may be given the names and addresses of the persons mentioned in the report, without reference to the status of any minors. The release of further information must be approved by the juvenile court. (Welfare and Institution Code 828)
11. Hospitals, schools, camps, Job Corps or placement agencies which require the information for the placement, treatment or rehabilitation of the minor.

**12.** The persons entitled thereto under Vehicle Code sections 20008-20012.

**13.** Any coroner or medical examiner.

*(Subd. (b)1 and 10 amended effective 7/1/05.)*

**c. Commission of Felony.** After your department has received notice of the disposition of the case, if the minor was found by the court to have committed a felony, you may send the usual information to the CII, FBI or other police agencies within California, but to no other persons or agencies (except as otherwise authorized herein).

**d. Contents of Report.** Note that the order does not prohibit release of information by law enforcement agencies about crimes or the content of arrest reports, except insofar as they disclose the identity of the juvenile subject of juvenile court proceedings.

**e. Coroner's Reports.** This order does not apply to coroner's reports.

*(Adopted effective 1/1/99.)*

## **16.10 Informal Exchange of Juvenile Records**

**A.** For the purpose of this rule, “juvenile records” include those records described in CA Rule of Court 1423(a), and all records maintained by the juvenile division of the Mendocino County Probation Department (“Probation”) and the Child Protective Services division of the Mendocino County Department of Social Services (“CPS”), even if the Departments’ contacts with a child or the child’s family are informal and juvenile court proceedings are not instituted. *(T.N.G. v Superior Court (1971) 4 C.3d 767, 780-781)*

**B.** Except as provided in subsection (c) all requests for inspection and disclosure of juvenile records shall be governed by the procedures set forth in W & I 827, CA Rules of Court 1423, and Local Rule 16.8.

**C.** Notwithstanding the policy that juvenile records should remain confidential, the law recognizes that it is in the best interest of children that exceptions to confidentiality be made so that persons investigating or working with children and their families may obtain complete, prompt and accurate information concerning the child and the family *(See, e.g., W&I 827(a)(1)(J), (K))*

The court hereby finds that a limited and informal disclosure of juvenile records by Probation and Child Protective Services to the agencies, individuals and organizations listed below on a

“need to know” basis will benefit children and their families by avoiding duplication of investigative efforts, and by allowing the agencies, individuals and organizations who work with, treat, or make recommendations regarding children and their families to promptly access relevant information. This process will benefit the court by ensuring that agencies, individuals and organizations who work with children and families have prompt access to all information which may be relevant in determining what is in a child’s best interest. The public interest in achieving these goals outweighs the confidentiality interests reflected in W & I 827 and 10850, et.seq. and establishes good cause for this rule.

1. Child Protective Services and Probation may provide verbal information regarding, allow inspection of, or provide copies of, relevant juvenile records to the following agencies, persons and organizations on an “as needed” basis:
  - (a) Probation;
  - (b) Child Protective Services;
  - (c) Facilitators of Child Protective Services parenting programs, including but not limited to, the Intake Support Group and the Family Empowerment Group;
  - (d) Mendocino County Mental Health Services, or any private psychologist, psychiatrist, or mental health professional ordered by the Juvenile Court to examine or treat any child who falls within the jurisdiction of the juvenile court, and his or her parent or guardian;
  - (e) Foster Family Agencies;
  - (f) Any hospital where a child is an inpatient for psychiatric reasons, for the purpose of treatment or discharge planning;
  - (g) Redwood Coast Regional Center;
  - (h) Any sexual abuse treatment program or victims’ group to which a child or his or her parent or guardian is referred for treatment by the Juvenile Court;
  - (i) Any substance abuse treatment provider, including but not limited to the Mendocino County Alcohol and Other Drugs Program (AODP), to

which a child or his or her parent or guardian is referred to for treatment by the Juvenile Court;

- (j) Victim/Witness coordinators for the State of California Victims of Crime Program;
- (k) Any domestic violence and/or anger management treatment program to which a child or his or her parent or guardian is referred to for treatment by the Juvenile Court;
- (l) The designated tribal representative or the Indian Child Welfare Worker for any federally recognized Native American Indian tribes located in Mendocino County;
- (m) A judge or commissioner assigned to a family law case with issues concerning custody or visitation;
- (n) The family court mediator or court-appointed evaluator conducting an assessment or evaluation of child custody, visitation or guardianship for the family or Juvenile Court;
- (o) The Mendocino County Victim Offender Reconciliation Program (VORP).

2. Any disclosure or exchange of information authorized by subsection (c) of this rule shall be subject to the following conditions:

- a.** A request for information exchange of Juvenile Records shall be prepared on form JVMC-3 (Appendix, form 3)
- b.** Probation and Child Protective Services shall first establish to the agency's satisfaction that the party requesting the juvenile records is in fact a member of an agency or organization, described in subsection (c) of this rule, or is an individual authorized to receive the information;
- c.** Information identifying the reporting party or source of referral shall be redacted prior to disclosure of juvenile records, and shall remain confidential as required by law (Penal Code 11167, 11167.5);



- d. If an agency, person or organization which has received juvenile records pursuant to this rule desires to disclose the information to a third party, it shall make a written application to the Juvenile Court for permission to disclose such information pursuant to W&I 827 and CA Rule of Court 1423.
  - e. Juvenile Records obtained pursuant to this rule shall be used exclusively in the investigation and/or treatment conducted the agency, organization or person described in subsection (C), and in any Juvenile or Family Court proceedings following the investigation or treatment;
  - f. Nothing in this rule is intended to limit any disclosure of information by an agency which is otherwise required or permitted by law.
3. If Probation or Child Protective Services receives a request for disclosure of juvenile records which it deems to fall outside the scope of informal disclosure authorized by this rule, the agency shall deny the request and refer the requesting party to the provisions of W&I 827, CA Rule of Court 1423 and Local rule 16.8.  
(Amended effective 7/1/05; adopted effective 1/1/99.)

*Title: Chapter 16.10 Juvenile and Family Courts Exchange of Information amended effective 7/1/05; adopted effective 1/1/99.*

### **16.11 Medical Issues**

- a. Standing Order Permitting Health Assessments, and Treatment of Temporarily Detained Minors.

In order that children detained by the Mendocino County Probation Department and Department of Social Services, Child Protective Services temporary holding facilities (i.e., Children's Shelter, Juvenile Hall, Juvenile Rehabilitation Facilities, Emergency Foster Homes, and alternative shelter programs) receive necessary care of their physical and mental health, and do not endanger the health and welfare of other persons in these facilities, the Mendocino County Community Clinic, and/or the Mendocino County Department of Mental Health, Mental Health Facility are hereby authorized to provide the following services to all such juveniles, which services follow the "Statement of Committee On Adolescence of the American Academy of Pediatrics, Health Care for Children and Adolescence in Detention Centers, Jails, Lock-ups, and other Court Sponsored Residential Facilities": (Subd. (a) amended effective 7/1/05.)

1. A comprehensive health assessment and physical examination.
  2. Any clinical laboratory tests the physician determines are necessary for the evaluation of the child's health status.
  3. Upon consent of the adolescent, sexually active adolescents may be screened for venereal disease. Contraceptive devices may be furnished to any juvenile upon the minor's request.
  4. Any immunization necessary to bring a child's immunization up to date, and, if immunization records are unavailable, any immunizations recommended by the American Academy of Pediatrics for that child's age.
  5. Any routine medical care required based on the results of the comprehensive health assessment, and any routine medical care required for the care of illness and injury, including the use of standard x-rays. Routine medical care as referred to above includes:  
*(Subdivision 5(a), (b) and (c) repealed effective 7/1/05)*
  6. A mental health status evaluation and necessary mental health services except no placement in an inpatient psychiatric facility shall occur without compliance with Welfare and Institutions Code sections 319.1, 635.1 and 5150, et seq.
  7. A dental assessment, including x-rays when appropriate, and any routine dental treatment required based on the results of the dental assessment.
- b.** At the time of admission to the temporary holding facility all reasonable efforts should be made to obtain the consent of the parent or legal guardian for non-routine medical care while the child is temporarily detained or placed out-of-home. In the event said consent cannot be obtained (e.g. parent or guardian is not available to give consent), the social worker or probation officer shall request a court order for any non-routine health care.
- c. Authorization for Use of Psychotropic Medication (Welfare and Institutions Code section 369.5)**

All requests for authorization for use of psychotropic medication for children who are wards

or dependents of the juvenile court shall be on Judicial Council form JV220, Application for Order for Psychotropic Medication – Juvenile, and shall comply in all respects with Welfare and Institutions Code section 369.5.

*(Subdivision (b) adopted effective 7/1/04.)*

*Amended effective 7/1/05; adopted effective 1/1/99*

**16.12 (Repealed 2004)**

*Chapter 16, Juvenile Rules, Rule 16.12. Law Enforcement Contact with Minors Under Juvenile Court Supervision repealed effective 7/1/04; adopted effective 1/1/99.*

**16.13 (Repealed 2004)**

*Chapter 16, Juvenile Rules, Rule 16.13. Line-ups repealed effective 7/1/04; adopted effective 1/1/99.*

**16.14 Inspection of Law Enforcement Holding Facilities**

Pursuant to Welfare and Institutions Code section 209 the Juvenile Court Judge or the Juvenile Justice Commission shall conduct an annual inspection of the Juvenile Hall and all law enforcement facilities in Mendocino County, which contain a lockup for adults which, in the preceding year, was used for the secure detention of any minor.

*(Amended effective 7/1/04.)*

*Title: Chapter 16.14. Inspection of Law Enforcement Lock-Ups amended effective 7/1/04; adopted effective 1/1/99.*

**16.15 (Repealed 2004)**

*Chapter 16, Juvenile Rules, Rule 16.15. De Facto Parents/Relations/Interested Persons repealed effective 7/1/04; adopted effective 1/1/99.*

**16.16 Motion to Challenge Legal Sufficiency of Dependency Petition**

In any dependency proceeding the court may entertain a legal challenge to the petition's sufficiency by a motion akin to a demurrer. Such a motion may be made in writing or orally, but must be made as early in the proceedings as possible.

The court may rule on the motion at the hearing at which it is made, or may continue the hearing on the motion to another date in order to receive points and authorities from counsel.

If the court sustains the motion, the court may grant leave to amend the pleading in the

petition upon any terms as may be just and shall fix the time within which the amendment or amended petition shall be filed within the statutory time for the hearing on jurisdiction.

*In re Fred J* (1979) 89 Cal.App.3d 168; Code of Civil Procedure section 472(a).

*(Amended effective 7/1/04.)*

*Title: Chapter 16.16. Motion to Challenge Legal Sufficiency of Petition amended effective 7/1/04; adopted effective 1/1/99.*

### **16.17 (Repealed 2004)**

*Chapter 16, Juvenile Rules, Rule 16.17. Presentation of Evidence repealed effective 7/1/04; adopted effective 1/1/99.*

### **16.18 Paternity Findings (Cal. Rules of Court, Rule 1612(m))**

**a. Determination of Issue (Welfare and Institutions Code section 726.5).** The issue of the paternity of a child may be determined in the context of a juvenile court proceeding. *(Subd. (a) amended effective 7/1/04.)*

**b. Necessary Court Measures.** If a person claims to be the natural/biological father of a child who is the subject of juvenile court proceedings, the court may take such measures as are necessary to make a paternity finding.

**c. Right to Counsel/Legal Responsibilities.** In any paternity proceeding arising under this rule the court shall inform the mother and the person claiming to be father of their right to be separately represented by counsel on the issue of paternity. The court shall advise the person claiming to be father of his legal responsibilities should he be found to be the natural father of the minor, including the obligation to pay child support and the possibility he may be incarcerated if he willfully fails to pay child support after being legally ordered to do so.

**d. Evidence or Testimony.** The court shall permit such evidence to be taken as necessary to determine the paternity of the child. Testimony from the mother and the person claiming to be the natural father may be sufficient to make a paternity finding. If the mother or the person claiming to be father is absent from the court proceeding, evidence in addition to testimony from those in attendance will normally be necessary to enable the court to make a paternity finding.

**e. Scientific Testing.** The court may order blood or other scientific tests if it

believes such tests will assist in making a paternity finding. The court shall determine which party or parties shall pay for any such test.

**f. Release of Findings/Need to Know.** Any paternity finding shall be noted in the clerk's minutes and shall be available to any person or agency having a need to know upon request.

*(Adopted effective 1/1/99.)*

## **16.19 Representation of Parties (Welfare and Institutions Code section 317-318, CRC 1438, 1479)**

### **a. General Competency Requirement**

All court-appointed attorneys appearing in juvenile court must meet the minimum standards of competence set forth in California Rules of Court 1438(c). Each attorney who wishes to accept appointments in juvenile court shall submit a summary of his or her qualifications to practice in juvenile court on competency form JVMC-1 (Appendix, Form 1). The Presiding Judge of the Juvenile Court shall review the competency form prior to appointing an attorney to represent a party in Juvenile Court.

*Sub.(a) adopted effective 7/1/05)*

### **b. Continuing Education**

Each court-appointed attorney who practices before the Juvenile Dependency Court shall complete within every three (3) year period at least twelve (12) hours of continuing education related to dependency proceedings. A minimum of four (4) hours of training in each three-year period shall be devoted to issues of domestic violence, sexual abuse of children and/or substance abuse. *(Sub (b) adopted effective 7/1/05)*

### **c. Standards of Representation**

(1). Attorneys are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers, probation officers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker

or probation officer and is not expected to perform services for the child that are unrelated to the child's legal representation.

**(2) Complaints about Court-Appointed Attorneys**

(a) Any Party to a juvenile proceeding may lodge a written complaint with the Court concerning the performance of his/her appointed attorney as follows:

- i. Complaints or questions shall initially be referred to that attorney's supervisor within the agency, association or law firm appointed to represent the client.
- ii. If the issue remains unresolved or if there is no designated agency, association or law firm, the party may submit a written complaint to the Court in which the matter is pending on Complaint Form JVMC-2 (Appendix, Form 2). The Court shall conduct a prompt review of the complaint or question. That review may include a hearing in-chambers. The Court may take any appropriate action required, including relieving counsel and appointing new counsel and/or holding a formal hearing on the matter.

(c) In the case of a complaint concerning the performance of an attorney appointed to represent a minor, the complaint may be lodged by the child or on the child's behalf by the social worker, a caretaker, a relative, a foster parent, or a child advocate.

**(d) Special duties of Children's Attorneys**

1. Unless otherwise specified by the judicial officer hearing a juvenile matter, an attorney appointed to represent a child shall serve as the Child Abuse Prevention and Treatment Act ("CAPTA") guardian ad litem for the child. (W&I 326.5)
2. Independent Investigation. An attorney for a child in a dependency proceeding shall make an independent investigation pursuant to Welfare and Institutions Code section 317(e). If the minor is four years or older, the independent investigation shall include an interview with the minor. If the results of said investigation vary from the information in the Social Worker's report the attorney shall file a report or declaration prior to the scheduled court hearing

summarizing the result of his or her investigation.

3. Access to Children in Welfare and Institutions section 300, Proceedings
  - (a). No party or attorney in a dependency proceeding shall interview the child about the events relating to the allegations in the petition(s) on file without permission of the child's attorney or court order.
  - (b) No party or attorney in a dependency proceeding shall cause the minor to undergo a physical, medical or mental health examination or evaluation without court approval. Each party shall have the right to notice and to be heard on the person to be selected to perform medical or mental health evaluations other than medical examinations per Welfare and Institutions Code section 324.5. *(Subd. (b)(2) amended, merged with subd. (b)(3) effective 7/1/04.)*
  - (c) This rule does not apply to the investigating probation officer or investigating social worker. *(Subd. 3) renumbered effective 7/1/05.)*
  - (d) **Caseloads for Children's Attorneys**  
Court appointed attorneys for children shall notify the Presiding Judge of the Juvenile Court when their caseload exceeds 140 cases (sibling groups shall constitute 1 "case" for the purpose of this rule.) Upon receiving such notification, the Presiding Judge of the Juvenile Court shall take steps to assure that the attorney is able to meet minimum standards of attorney performance.

*Title: Chapter 16.19. Representation of Minors amended effective 7/1/04; adopted effective 1/1/99.*

## **16.20 Modifications of Orders (Welfare and Institutions Code sections 386-388; 775-779)**

- a. **Previous Order.** Any request order to change, modify or set aside a previous order of the juvenile court must comply with Welfare and Institutions Code sections 386-388, 775-779. *(Subd. (a) amended effective 7/1/04; adopted as subd. (c) effective 1/1/99.)*
- b. **Decrease in Visitation by Parent/Party.** Any significant decrease from the court-ordered level of a parent's/party's level of visitation shall be presented to the affected parent/party for comment before being submitted to the court. The court may set a hearing on the issue after hearing the parent's/party's comments on the

proposed reduction. *(Subd. (b) amended effective 7/1/04; adopted as subd. (d) effective 1/1/99.)*

**c. Vacations Out of Mendocino County.** Permission for a dependent or ward's custodian to take the child out of Mendocino County for a vacation may be submitted directly to the court for approval. Any attempts to notify the parents shall be indicated in the application. *(Subd. (c) amended effective 7/1/04; adopted as subd. (e) effective 1/1/99.)*

**d. New Service Plan Requirements.** Any significant changes or additions to the court ordered Family Reunification or Family Maintenance service plan for parents/guardians shall be submitted to the parents and/or their attorney for approval before implementation. A parent who disagrees with the new requirements may request a hearing with the court on the matter. *(Subd. (d) amended effective 7/1/04; adopted as subd. (f) effective 1/1/99.)*

*(Adopted effective 1/1/99.)*

*Title: Chapter 16.20. Modifications of Orders amended effective 7/1/04; adopted effective 1/1/99.*

*Chapter 16.20. Modifications of Orders, subd. (a)(b) repealed effective 7/1/04; adopted effective 1/1/99.*

## **16.21 Creation of a Family Court Order in Juvenile Court**

**a. Petition for Dismissal.** Whenever any interested party believes that juvenile court intervention on behalf of the child is no longer necessary, application may be made to the juvenile court pursuant to Welfare and Institutions Code section 388 or at any regularly scheduled hearing to have the case dismissed. Thereafter, any future litigation relating to the custody, visitation and control of the child shall be heard in the family court or other appropriate superior court civil department.

**b. Juvenile Court Custodial Order.** If the juvenile court determines that jurisdiction of the juvenile court is no longer necessary for the protection of the child, the court may create a custodial order (JV-200) consistent with the needs of the child and thereafter dismiss the juvenile petition and case (Welfare & Institutions Code section 361.2, 362.4). Any party may object to the proposed dismissal and be heard on the issues. *(Subd. (b) amended effective 7/1/04.)*

### **c. Maintenance of Orders in Court Files**

**1. Juvenile Court.** The original court order shall be filed in the family



court or civil file and endorsed copies shall be filed in the juvenile court file. A copy of the endorsed-filed order shall be mailed to the attorneys and parties.

**2. Superior Court.** If no court file exists in the family court or other superior court division or in any other jurisdiction, the court clerk shall create a file under the names of the child's parents. The file shall contain a copy of the juvenile court order. There shall be no filing fee. Welfare and Institutions Code section 362.4.

*(Adopted effective 1/1/99.)*

## **16.22 Guardians Ad Litem**

### **a. For Children**

**1.** All children who are the subject of juvenile court proceedings shall have a guardian ad litem appointed to represent them. Unless otherwise stated by the court, the child's attorney shall serve as the guardian ad litem. (Welfare and Institutions Code section 326.5.)  
*(Subd. (a) & (a)(1) amended effective 7/1/04.)*

### **b. For Parents**

The court may appoint a guardian ad litem to represent any incompetent parent or guardian whose child is before the juvenile court pursuant to a dependency petition (Welfare and Institutions Code section 300, et seq.). The parent of guardian shall be entitled to a hearing on the issue of whether a guardian ad litem shall be appointed. *(Subd. (b) amended effective 7/1/04.)*

### **c. Notice to Guardian Ad Litem, Access to Records, Rights to Appear**

**1.** In all proceedings the guardian ad litem shall be given the same notice as any party. The guardian ad litem shall have the same access to all records relating to the case as would any party. The guardian ad litem shall have the right to appear at all hearings. *(Subd. (c)(2) & (3) adopted as subd. (c)(1) effective 7/1/04.)*

*(Adopted effective 1/1/99.)*

*Chapter 16, Juvenile Rules, Rule 16.22. Guardian Ad Litem, subd. (a)(2)(3) repealed effective 7/1/04; adopted effective 1/1/99.*

**16.23 (Repealed 2004)**

*Chapter 16, Juvenile Rules, Rule 16.23. Local Rules Relating to Child Advocates repealed effective 7/1/04; adopted effective 1/1/99.*

**16.24 Restitution Determination Procedures (W&I 730.6, 742)**

a. In any juvenile delinquency disposition where the Probation Department does not have sufficient information at the time of disposition to make a specific recommendation as to the amount of restitution to the victim that may be ordered pursuant to Welfare and Institutions Code section 730.6(a)(2)(B), the following procedure will apply:

1. The disposition report prepared by Probation should request that a date be set in approximately 60 days for a restitution hearing.
2. The Probation Department shall investigate the matter and prepare a restitution recommendation report that addresses:
  - (a) the value of stolen or damaged property;
  - (b) medical expenses;
  - (e) lost wages or profits due to injury;
  - (d) lost wages or profits due to time spent as a witness or assisting the police or District Attorney; and
  - (e) the names of any co-responsible persons.
3. The restitution report shall be submitted to the court and both counsel at least five (5) days prior to the scheduled hearing. The documentation upon which the Probation Officer relies in making the restitution recommendation shall be forwarded with the report to the District Attorney and minor's counsel, but not to the court.

b. On the date set for the restitution hearing, the matter will be called on the record in the presence of counsel for both parties. If either the minor or the minor's parent/guardian is not present, counsel for the minor shall inform the court whether those persons indicated that they did or did not wish to be present for the hearing.

- c. If the matter is set for an evidentiary hearing after the Probation Department has made a recommendation for a specific amount of restitution, the burden to produce witnesses and the burden of proof by a preponderance of the evidence that the recommended amount is excessive shall be on the minor.
- d. After a restitution order is issued by the court, the Probation Officer shall notify the victim within 60 days of the following:
  - 1. The name and address of the minor.
  - 2. The amount and terms of restitution ordered.
  - 3. The offenses that were sustained.
  - 4. The name and address of the parent/guardian of the minor.
  - 5.. The applicability of Civil Code sections 1714.1 and 1714.3 regarding joint and several liability of the parent/guardian.
  - 6. Whether the minor's parents received proper notice of the proceedings and potential liability.
  - 7. The victim's right to a certified copy of the order reflecting items 1-6 above.
  - 8. The victim's right to enforce the restitution order as a civil judgment pursuant to section 730.6(r) and Penal Code section 1214.
- d. Thereafter, prior to hearing any motion to modify the restitution order, all parties and the victim shall be notified at least ten (10) days prior to the hearing date, as required by section 730.6(h).

*(Adopted effective 7/1/05)*

### **16.25 Interviewing Minors Who Are Alleged Victims of Child Abuse.**

All investigators, including agencies and law enforcement personnel, attorneys and child advocates, shall attempt to minimize the number of interviews of a child relating to the events surrounding the alleged child abuse. To this end anyone wishing to learn facts about the alleged incident shall first review the comprehensive interview taken by the investigating officer.

*(Adopted effective 7/1/05)*



**CHAPTER 16**  
**APPENDIX**  
**TO**  
**JUVENILE COURT RULES**

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MENDOCINO  
JUVENILE DIVISION**

**CERTIFICATION OF ATTORNEY COMPETENCY**

I, \_\_\_\_\_ am an  
Name Office Address Telephone Number

Attorney at law licensed to practice in the State of California. My State Bar Number is  
\_\_\_\_\_. I hereby certify that I meet the minimum standards for practice  
before a Juvenile Court set forth in California Rules of Court, rule 1438, and local rule  
17.25 and that I have completed the minimum requirements for training, education and/or  
experience as set forth below.

Training and Education: (Attach copies of MCLE certificates or other documentation of  
attendance)

| Course Title | Date Completed | Hours | Provider |
|--------------|----------------|-------|----------|
|              |                |       |          |
|              |                |       |          |
|              |                |       |          |

Summary of Juvenile Dependence Experience:

Dated: \_\_\_\_\_ Signature \_\_\_\_\_

In RE: \_\_\_\_\_  
Case No: \_\_\_\_\_ Certification of Attorney Competency  
Dated: \_\_\_\_\_

JVMC-1

*(Adopted effective 7/1/05)*

**Mendocino Superior Court**

|   |                    |
|---|--------------------|
| Application submitted by: (Name and Address)<br>Name: _____<br>Street Address: _____<br>City, State, Zip Code: _____<br>Telephone No. _____                                     | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO<br>Street Address: 100 North State Street<br>City and Zip Code: Ukiah, CA 95482<br>Branch Name: SITTING AS THE JUVENILE COURT |                    |
| Child's Name: _____   |                    |
| <b>COMPLAINT ABOUT PERFORMANCE OF<br/>COURT APPOINTED ATTORNEY</b>  | CASE NUMBER: _____ |

|                                      |  |
|--------------------------------------|--|
| <b>Name of applicant:</b>            |  |
| <b>Relationship to the minor(s):</b> |  |
| <b>Attorney's Name:</b>              |  |

|   |  |
|---|--|
| The specific reasons for my complaint are: (must be typewritten or printed legibly) |  |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
| I am requesting the following:  |  |
|   |  |

Attach separate page if needed.

Dated: \_\_\_\_\_  
Signature \_\_\_\_\_

Any complaint must be submitted on this form or at least have this form as a cover page to the application. The application must be filed at the Superior Court, 100 North State Street, Ukiah, California – Room 108.

**JVMC – 2** (Adopted effective 7/1/05)

**Mendocino Superior Court**

|  |                     |
|--|---------------------|
| Application submitted by: (Name and Address)<br>Name: _____<br>Street Address: _____<br>City, State, Zip Code: _____<br>Telephone No. _____                                    | FOR COURT USE ONLY  |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO<br>Street Address: 100 North State Sreet<br>City and Zip Code: Ukiah, CA 95482<br>Branch Name: SITTING AS THE JUVENILE COURT |                     |
| Child's Name: _____  |                     |
| <b>DECLARATION: INFORMAL EXCHANGE OF<br/>JUVENILE RECORDS</b> (Welf. & Inst. §827, Rule of Court 1423)   |                     |
|  | <b>CASE NUMBER:</b> |

I, \_\_\_\_\_, do hereby declare:

1. That I am a person described in Mendocino County Local rule of Court 16.10(c), specifically, \_\_\_\_\_
2. That I am requesting to view and copy juvenile records, as described on the attached page, concerning the above-named child/minor currently in the possession of the:  
Juvenile Court   Probation Dept.   Dept. of Social Services   Court-Appointed   Special Advocate   Family Court Services
3. That I certify that I am requesting these records for use in my official capacity and that I will not disseminate any portion of the records released to me or information relating to their contents, other than to other persons or agencies described in S.O. 99-021 and that no portion of those records and no information relating to the contents of those records shall be made attachments to any other documents without the prior approval of the presiding Judge of the Juvenile Court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

I declare under penalty of perjury that the above is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_ in Ukiah, California.

Signature: \_\_\_\_\_

*Amended effective 7/1/05; adopted effective 1/1/99.*

*Title: Application for Juvenile Court Records amended effective 7/1/05, adopted effective 1/1/99.*

**JVMC-3**



## CHAPTER 17. SMALL CLAIMS

### 17.1 Small Claims Procedures

All small claims documents, including complaints and counter claims, shall be completed by the parties. They shall be typed in conformance with Local Rule, rule 7.8. Any forms deemed by the clerk of court not to be neat or legible shall not be filed.

*(Adopted effective 1/1/99.)*

### 17.2 Continuances

Continuances of small claim trials may be granted once by the clerk of court only if the request is made in person or in writing, made prior to the trial and/or upon a showing of good cause. On the date of the hearing, nonappearance by plaintiff or failure of proof of service cases may be dismissed without prejudice unless a continuance is granted by the court prior to the hearing date.

A request for continuance of a small claims hearing date (Code Civ. Proc., §116.570) may be made upon presentation of the form Request for Continuance and Clerk's Notice of Continuance to the clerk along with a \$10 nonrefundable fee where a proof of service on defendant has been filed or the defendant is requesting a postponement of the hearing date.

Request for reissue for non-service of the defendant of small claims hearing date may be granted by the clerk of court only if the request is made in person or in writing, made a least five calendar days before trial and/or upon a showing of good cause.

It is the policy of the court that all small claims cases which are not properly served by the date assigned for trial shall be dismissed without prejudice by the court.

*(Amended effective 1/1/02; adopted effective 1/1/99.)*

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## **CHAPTER 18. TRAFFIC RULES**

### **18.1 Traffic Filings**

The Clerk's Office, Traffic Division, is responsible for all traffic and non-traffic infractions.

*(Adopted effective 1/1/99.)*

### **18.2 Pretrial Appearances**

Traffic court arraignments shall be set according to the General Order adopted pursuant to rule 2.2 of the Local Rules.

A defendant may appear at the traffic division counter to request an appearance in court. The clerk shall then advise the defendant regarding arraignment procedures.

At the arraignment, the defendant shall enter a plea of guilty, not guilty, nolo contendere, etc. When a plea of not guilty is entered, the clerk shall assign a trial date. Upon the entry of a plea of guilty, the court may set the amount of fine and the date payment is due or grant a request for attendance at a licensed traffic violator's school if the defendant is eligible. In the event a defendant is ordered to attend traffic school, an administrative fee shall be collected and a date assigned for the successful completion of traffic school.

*(Adopted effective 1/1/99.)*

### **18.3 Counter Arraignments**

Unless the courtesy notice states that an arraignment in court is required, the defendant may complete an arraignment form at the traffic counter and schedule a trial date with the clerk. Prior to the appearance date, the defendant may post bail and declare his/her intention to plead not guilty. The clerk shall then set the matter for trial.

*(Adopted effective 1/1/99.)*

### **18.4 Continuance Policy**

On or before a due date, the clerk has authority to grant a continuance of not more than sixty (60) calendar days for any matter except a court trial and traffic school sign-up. After a case has been continued up to the sixty (60) days, any request for a continuance must be made in open court.

*(Adopted effective 1/1/99.)*

## **18.5 Trial Procedures**

Traffic court trials shall be set according to the schedule set forth in the applicable General Order or as otherwise directed by the court.

*(Adopted effective 1/1/99.)*

## **18.6 Appeals**

If judgment is rendered against the defendant, the defendant has thirty(30) calendar days from the entry of judgment to file an appeal. It is the defendant's responsibility to comply with California Rules of Court, rules 180–189. Failure to timely request or file the record on appeal may result in dismissal of the appeal.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

## **18.7 Traffic School**

The court may accept attendance at a certified traffic school as grounds for dismissal of a minor traffic infraction.

In addition to the eligibility criteria established pursuant to California Rules of Court, rule 851, traffic school may be authorized by the clerk without further referral to a judicial officer if the defendant has not attended traffic school within the last eighteen (18) months and the speed is violation of 25 miles or less over the posted speed limit.

An administrative fee shall be collected as a prerequisite to attendance or authorization of traffic school.

*(Adopted effective 1/1/99.)*

## **18.8 Trial by Declaration**

A defendant may elect to have a trial by declaration of any charged infraction. Pursuant to Vehicle Code section 40902, subdivision (b), if the defendant elects to have a trial by written declaration, the defendant shall, at the time of submitting that declaration, submit bail in the amount established in the uniform traffic penalty schedule pursuant to section 40310. If the defendant is found not guilty or if the charges are otherwise dismissed, the amount of the bail shall be promptly refunded to the defendant.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

## **CHAPTER 19. FEES OF ATTORNEYS, INVESTIGATORS AND EXPERTS**

### **19.1 Attorney's Fees in Cases Involving Claims of Minors, Insane or Incompetent Persons**

Counsel fees in excess of the following schedule ordinarily will not be considered reasonable in actions compromised under section 372 of the Code of Civil Procedure or section 3500 of the Probate Code:

- a.** Recovery two weeks or earlier prior to trial date first assigned case: 25% of net amount received.
- b.** Recovery later than two weeks prior to trial date first assigned case or during trial: 33-1/3% of net amount recovered.
- c.** Recovery after filing of respondent's brief on appeal or after affirmance: 40% of net amount recovered.

In computing fees the court will require parents claiming reimbursement for medical expenses, etc., to pay their proportionate share of the counsel fees except in cases of hardship. Reasonable costs incurred that were paid by counsel and are itemized and accompanied by appropriate vouchers or other supporting evidence will be allowed except they will not be included in the amount of the recovery on which fees are computed.

*(Adopted effective 1/1/99.)*

### **19.2 Attorney's Fees in Actions on Promissory Notes, Contracts Providing for Payment of Attorney's Fees and Foreclosures; Attorney's Fee Schedule**

The following attorney's fees shall, under normal circumstances, be awarded in actions on promissory notes and contracts providing for the payment of attorney fees and foreclosures;

#### **a. Default Action on a Note or Contract (exclusive of costs):**

25% of the first \$ 1,000 with a minimum of \$150  
20% of the next \$ 4,000  
15% of the next \$ 5,000  
10% of the next \$10,000  
5% of the next \$30,000  
2% of the amount over \$50,000.

In an action upon contract providing for attorney's fees, the clerk shall include in the judgment attorney's fees in accordance with this schedule, not to exceed the amount paid for.

- b. Contested Action on Note or Contract.** The same amount as computed under subparagraph (a) increased by such reasonable compensation computed on an hourly or per day basis for any additional research, general preparation, trial or other services as may be allowed by the court.
- c. Foreclosure of Mortgage or Deed of Trust.** The same amount as computed under subparagraph (a) or (b) increased by 10%.
- d. Foreclosure of Assessment or Bond Lien Relating to a Public Improvement.** The same amount as computed under subdivision (a) or (b), except that the minimum fee shall be \$75 in an action involving one assessment or bond, and an additional \$20 for each additional assessment or bond being foreclosed in the same action.

*(Amended effective 1/1/07; adopted effective 1/1/99.)*

### **19.3 Attorney's Fees in Guardianship and Conservatorship Proceedings**

Attorneys for guardians or conservators are compensated according to the work actually performed. The size of the estate corpus and the responsibility assumed by the attorney are only two of the factors considered in arriving at the value of the services. Application for attorney's fees must be accompanied by a complete statement of the facts upon which the application is based, including a detailed statement of the amount of time devoted to each component of the services and must specify the amount requested for each item of service.

*(Adopted effective 1/1/99.)*

### **19.4 Attorney's Fees and Representative's Fees for Extraordinary Services in Probate Proceedings or in Any Matter Defined in the Probate Code for Which a Statutory Fee is Not Established**

- a.** In evaluating the justification for an award of fees for extraordinary services or other services referred to herein, the court will take into consideration the statutory fee and consider whether it constitutes adequate compensation for all of the services rendered by the attorney or representative.
- b.** Notwithstanding the principles stated in the foregoing paragraph (a) extraordinary compensation will be paid when requested for the following services:

- 1.** Preparation of fiduciary tax returns and resolution of problems arising from the audit of such returns. Payments made to accountants or other

tax preparers for such services and charged to the estate must be set forth in the request for extraordinary compensation and subtracted from the amount requested.

- 2.** Sales of property without a broker.
- c.** Subject to the principles stated in the foregoing paragraph (a), compensation for extraordinary services will be considered in the following situations:
  - 1.** Litigation on behalf of the estate;
  - 2.** Operating or selling a business;
  - 3.** Sales of estate property;
  - 4.** Performance of any act resulting in extraordinary benefit to the estate or requiring an extraordinary expenditure of time or display of confidence.
- d.** Application for fees for extraordinary services will not be considered unless the title of the petition and the notice of hearing include a reference to the request. The prayer shall set forth the specific amount of the request.
- e.** An application for compensation for extraordinary services or any other services for which a fee is requested other than ordinary services shall specify:
  - 1.** Date rendered;
  - 2.** Services rendered in detail;
  - 3.** Hours spent on ordinary services;
  - 4.** Hours spent on extraordinary services;
  - 5.** Hourly rate;
  - 6.** Total amount requested.

*(Adopted effective 1/1/99.)*

## **19.5 Fees of Guardians and Conservators**

Among factors to be considered in determining the compensation allowable to guardians and conservators are:

- a.** The gross income of the estate;
- b.** The success or failure of administration of the guardian or conservator;
- c.** Any unusual skill or experience which the guardian or conservator in question may have brought to his work;

- d.** The fidelity or disloyalty displayed by the guardian or conservator;
- e.** The amount of risk and responsibility assumed by the guardian or conservator in carrying out such duties;
- f.** The time consumed by the guardian or conservator in carrying out such duties;
- g.** The custom in the community as to charges exacted by trust companies and banks;
- h.** The character of the work done in the course of administration whether routine or involving skill and judgment;
- i.** Any estimate which the guardian or conservator has given of the value of the guardian or conservator's own services (*Estate of Nazro*, (1971) 15 Cal.App.3d 218).

*(Adopted effective 1/1/99.)*

## **19.6 Notices**

Before any order for the payment of fees is made there shall be filed with the court proof that all parties entitled to notice have been given notice of filing the petition for payment of fees and a copy of the petition requesting such fees.

*(Adopted effective 1/1/99.)*

## **19.7 Fees and Commission Must Be Fixed by Court Prior to Payment**

There is no authority for the payment of any fees or commissions in decedent's estates, guardianships or conservatorships in advance of a court order authorizing the same. Representatives will be surcharged interest to the date of an order authorizing such payment unless in the case of a decedent's estate the written consent of the residuary beneficiaries is filed with the court and the amounts paid are reasonable and proper.

*(Adopted effective 1/1/99.)*

## **19.8 Court Appointed Attorneys: Standards of Experience and Allowable Fees and Expenses**

The following procedure shall be used in fixing fees allowable to attorneys appointed by the  
**Local Rules for the Mendocino Superior Court – Fees: Attorneys, Investigators & Experts**

superior court to represent individuals who are unable to employ counsel and who cannot be represented by the public defender or the appointment conflicts firms or attorneys who are employed by the public defender or appointment conflicts firm, but who are to be separately paid in accordance with this rule.

**a. Application for Fees**

1. The court shall allow attorney's fees and costs for services rendered and expenditures made by counsel properly appointed in criminal, juvenile or other matters while such matters are pending before the superior court. Travel expenses must be pre-approved by the court. *(Subd. (a)(1) amended effective 7/1/04.)*
2. Application for the payment of such fees and costs in minimal or delinquency proceedings shall ordinarily be made at the time of the final superior court disposition of the proceeding in which court appointed counsel served, but in no event shall such application be presented more than 30 days thereafter. Pretrial interim application for fees may be made in cases involving the death penalty or life without the possibility of parole, or in exceptionally complex or lengthy cases upon special application; provided, however, that no pretrial interim authorization for fees shall exceed the sum of \$3,000 per month, plus expenses, for lead counsel and \$1,500 per month, plus expenses, for associate counsel, such funding limitations to be imposed as an average for the claim period. *(Subd. (a)(2) amended effective 7/1/04.)*
3. Attorneys in dependency cases, shall bill monthly for fees and costs, and in any event not later than 10 days from the end of the month. *(Subd. (a)(3) amended effective 7/1/04.)*
4. Application for fees and costs shall be made by written declaration in a form to be approved by this court, itemizing the legal services rendered, the amount of time devoted to the case and the expenses incurred.
5. Application for fees and costs shall be submitted to the court executive officer or designee for subsequent approval by the department in which the case has been pending. *(Subd. (a)(5) amended effective 7/1/04.)*
6. The court will allow a reasonable fee in consideration of the nature and complexity of the case and the degree of skill and effort required of counsel.

**b. Categories of Charged Crimes or Other Matters**

1. **Class 1:** All homicides, whether capital or non-capital, and all offenses having a maximum sentence of life or life without possibility of parole, or in the discretion of the court, an aggregate state prison sentence of 30



years or more.

- 2. Class 2:** All crimes for which the upper term of punishment is five years or more, but less than Class 1.
- 3. Class 3:** All adult felonies and felonies charged pursuant to Welfare and Institutions Code section 602.
- 4. Class 4:** All civil matters, all other felonies and misdemeanors and juvenile matters where the petition seeks jurisdiction under Welfare and Institutions Code sections 601 and 602.

**c. Minimum Experience Requirements for Appointed Attorneys**

- 1. Class 1:** Certified criminal law specialist or equivalent.
- 2. Class 2:** Those who, as chief counsel, have handled twenty crimes charged as felonies, five of which were submitted to a jury for a decision: five of which included contested superior court proceedings such as Penal Code section 1538.5 or Penal Code section 995 motions; and the remainder of which proceeded to disposition. A maximum of ten juvenile cases charged as felonies may be counted toward the requirement of the twenty cases.
- 3. Class 3:** One year experience as attorney; criminal defense experience.
- 4. Class 4:** All attorneys.
- 5.** Upon a proper showing, a person may be eligible for a class by virtue of showing of equivalent experience as determined by the presiding judge.

**d. Fee Schedule.** All attorneys, as a condition to becoming eligible for appointments, shall agree to handle all cases to which they are appointed on a fee basis. The court will adopt a fee schedule separate and apart from the court rules. Said schedule will be reviewed and adjusted as necessary annually.

- 1.** Regardless of the fee schedule set forth, if an attorney believes that the case is of such a special or unusual nature that it is not possible to render services in accord with the maximum fee schedule, he/she must file a declaration declaring the reasons for that conclusion. Upon such written application, a reasonable fee in excess of the limits set forth in this schedule may be established by the judge presiding in the case.
- 2.** Except as set forth in paragraph (4) below, attorneys shall not receive extra compensation for normal operating expenses such as mileage,

photocopies and long distance telephone calls; extra compensation will be allowed for such expenses as fees for investigators and expert witnesses in accordance with these rules.

3. In all cases, the final fees allowed shall be determined by reference to the nature and complexity of the case and the degree of skill and effort required in handling the matter. Fee claims will be adjusted in accordance with this standard.
4. In the event that an attorney appointed by this court must appear in court of another county on a case transferred from this court, the attorney shall be entitled to reasonable travel and living expenses necessarily incurred in connection with his/her appearance in the court of the other county. Unless the appointed attorney obtains permission in writing from the presiding judge in advance, the attorney shall travel by private automobile and shall be reimbursed for necessary mileage at the rate allowed by the County of Mendocino at the time of the travel. In no event shall the attorney seek payment of fees for the time spent by the attorney while traveling. Living expenses for each such attorney will be allowed at the rate established by the State Board of Control Rules.

Any request for reimbursement of travel or living expenses shall be made by written declaration and submitted to the court executive officer who shall review such requests and recommend payment in appropriate cases to the presiding judge. All requests for such reimbursement shall include a complete inventory of costs and expenses with all applicable receipts attached.

*(Amended effective 7/1/99, adopted effective 1/1/99.)*

## **19.9 Investigation Fees and Expenses**

- a. **License.** Each investigator shall provide the court executive officer with a true copy of his or her most recent license and a list of all employees who are authorized to work, there under.
- b. **Work Performed.** Each billing shall clearly identify what work was performed by what persons. If work was performed by more than one person, some symbol shall be used to identify the hours actually worked and the tasks actually performed by each individual.
- c. **Time to Submit Billing.** The investigator shall not submit a billing until his or her work on the case has been concluded unless time worked covers more than one fiscal year; but, in no event shall such billing be presented more than 30 days thereafter. However, in unusual cases involving many hours of investigative work, the court may authorize interim billings, provided that such authorization

is obtained in advance.

Where the court authorizes interim billings, each bill shall identify the period of time that it covers and shall be identified by a serial number (e.g. "Interim Billing No. 3").

- d. Order of Appointment; Further Authorization.** Each order appointing an investigator shall provide a blank space for the judge to insert a dollar limit for the services to be provided. When this authorization or "cap" is exhausted, further authorization must be obtained from the court before billings in excess of the original amount will be paid. This authorization must be obtained in advance. When an attorney or investigator requests an order authorizing additional investigative time, the request shall be accompanied by a detailed statement of the work performed up to that time. This detailed statement will not be treated as a billing unless the court has granted authorization for interim billing.
- e. Meals; Lodging.** The court will not reimburse for meals or lodging unless advance approval has been obtained.
- f. Application for Fees and Expenses.** An application for investigation fees and expenses shall be made in writing by the assigned counsel and not the investigator as follows:
  - 1. To the judge of the department to which the case has been assigned;
  - 2. To the judge of the department to which the matter has been referred pursuant to Penal Code section 987.9;
  - 3. In all other cases to the presiding judge.
- g. Amount of Fees.**
  - 1. Cases Other Than Capital or Life Sentence Cases.** The initial application shall not exceed the sum of \$3,000. Additional applications may be made upon a showing that further investigation is necessary in an amount not to exceed \$1,500 per application.
  - 2. Capital and Life Sentence Cases.** Application for fees in capital cases shall be governed by the provisions of Penal Code section 987.9 and is upon a declaration by the appointed counsel. The initial application for capital and life sentence cases shall not exceed \$5,000. Additional application may be made upon a showing that further investigation is necessary in an amount not to exceed \$2,500 per application.

**3. All Cases.** In no event shall the court grant fees or expenses not reasonably justified by the nature of the case as supported by written declaration by the assigned counsel. This rule will be strictly enforced. The declaration shall specify the nature and purpose of the proposed investigation and shall contain an estimate of the fees and expenses involved. The court will consider for payment long distance telephone calls and reasonable time spent in writing reports. Unusual or extraordinary requests shall be justified in detail. The court will not authorize payment without specific prior approval for:

- a.** Transportation services;
- b.** Clerical work;
- c.** Courtroom observation;
- d.** Defendant services, i.e., haircuts, shopping, mail services, etc.;

All billings shall contain a detailed and specific statement of services actually rendered. Time shall be billed in increments of 1/10 hour (See sample billing, Appendix A). The following types of services shall be separately stated:

- Travel time;
- Time spent interviewing witnesses;
- Time spent in conference with attorneys;
- Time spent reviewing reports or other documents;
- Time spent in measuring, diagramming or photographing scenes, locations, persons and objects;
- Time spent researching public records or in obtaining documents or other information.

Ordinarily, the court will not approve payment of time spent in locating a defendant in a criminal case, a minor in a 602 juvenile case or a parent in a 300 juvenile matter. It is the duty of such persons to remain in contact with their attorneys and investigators.

Double billing for travel and similar expenses is prohibited (for example, an investigator traveling to a location to work on more than one case; the investigator shall bill only once for travel and related expenses).

The court will not approve payment of excessive time spent in conference with attorneys, fellow investigators or with the defendant. The billing must set forth a detailed explanation of the need for such conference time before the court will consider payment.

An investigator who wishes to bill for time spent with an attorney in court must obtain

**Local Rules for the Mendocino Superior Court – Fees: Attorneys, Investigators & Experts**

approval of the court before spending such time in court. The court will not approve payment for time spent with an attorney in court, unless there has been such prior approval.

In all criminal and juvenile cases, investigators' billings will be treated as confidential, will be placed in sealed envelopes and will be made available only to the court and authorized staff.

The court will not appoint investigators employed by the same firm to represent multiple defendants in criminal cases or different parties in a single juvenile case due to the potential for conflicts of interest.

An investigator has the duty to disclose fully in writing any payment or other compensation received from any source other than the court for services rendered in connection with any case in which the investigator has been appointed.

- h. Order for Payments.** The order for investigation fees and expenses shall be in the form set forth in a form approved by this court. All orders for payment shall include in the caption an accumulative total of all payments to date. Subsequent orders shall not include any expenses prior to the last order submitted.
- i. Maximum Rates for Investigative Services.** Claims for investigative services authorized pursuant to this rule shall be paid at a rate established by a general order of the court. General orders are on file in the office of the court executive officer.
- j. Submission of Claims.** Claims for investigation fees and expenses shall be made on a form approved by the courts to which must be attached a copy of the court order awarding fees and a detailed accounting of all claimed fees and expenses.

The claim shall first be submitted to the court executive officer for approval.

*(Adopted effective 1/1/99.)*

## **19.10 Non-psychiatric Expert Fees and Expenses**

- a. Application for Expert Fees and Expenses.** Application for non-psychiatric expert fees and expenses shall be made in writing as follows:
  - 1.** To the judge of the department to which the case has been assigned;
  - 2.** To the judge of the department to which the matters has been referred pursuant to Penal Code section 987.9;
  - 3.** In all other cases to the presiding judge.

- b. Amount of Fees.** In no event shall the court grant fees or expenses not reasonably justified by the nature of the case as supported by the written declaration. The written declaration shall specify the nature, purpose and materiality of the proposed expert services and shall contain an estimate of the fees and expenses involved including the proposed expert's hourly fees for court work and for courtroom testimony. The name of the expert to be retained and a brief statement of qualification shall also be included or attached. Unusual or extraordinary requests shall be justified in detail.
- c. Order for Fees and Expenses.** The order for expert fees and expenses shall be on a form approved by this court.
- d. Maximum Rates for Expert Services and Testimony.** Claims for expert services authorized pursuant to this rule shall not exceed the amounts approved by the court.
- e. Submission of Claims.** Claims for expert fees and expenses shall be made on a form approved by this court to which must be attached a copy of the court order awarding fees and a detailed accounting of all claimed fees and expenses. The claim shall be submitted to the court executive officer for subsequent approval by the department which authorized the expenditure specified in paragraph (a) of this rule.

*(Adopted effective 1/1/99.)*

### **19.11 Claim for Payment**

Court appointed attorneys, investigators and expert witnesses shall submit a County of Mendocino "Claim" form in order to receive payment for services rendered. Each person seeking payment must complete and submit a claim substantially in the form set forth in Appendix A to Rule 19.

- a. Order of Appointment by Court.** Before payment may be processed, an endorsed copy of the order appointing the claimant must be attached to the claim form.
- b. Submission for Signature.** Each claim for payment should be submitted to the Superior Court Accounting Department, who will submit the claim for signature to the judge who made the appointment. Once the judge signs the order statement, the claim will be processed by the court executive officer or designee. (Subd. (b) amended *effective 7/1/04.*)
- c. Time Limit for Submitting Claims.** Attorneys, investigators and expert witnesses appointed by the court shall file a claim for payment no more than

thirty (30) days after rendering their services. Claims submitted beyond forty-five (45) days will require a separate declaration explaining to the court that the delay was unavoidable. Consistent failure to provide timely claims will be considered by the court in future appointments. Claims submitted forty-five (45) beyond a fiscal year will not be honored.  
(Subd. (c) amended *effective 7/1/04.*)

*(Adopted effective 1/1/99.)*

**CHAPTER 19**  
**APPENDIX**  
**TO**  
**FEES FOR ATTORNEYS & INVESTIGATORS**



## CHAPTER 19

### FEES OF ATTORNEYS, INVESTIGATORS AND EXPERTS

#### CLAIM INSTRUCTIONS

**1. Claims for Payment.** Court appointed attorneys, investigators and expert witnesses shall submit a court approved claim form in order to receive payment for services rendered on a monthly basis.

**a. Completion of Claim.** Each person seeking payment must complete the form as follows:

1. Name and address of claimant
2. Signature of claimant
3. Case name and number
4. Invoice number

In the body of the form, the claimant shall provide the following order statement:

"It is hereby ordered that the County of Mendocino, through the Auditor of the County, compensate the above names person for the total due for services rendered and costs incurred in the sum of \$\_\_\_\_\_.

Dated:\_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court"

**b. Order of Appointment by Court.** Before payment may be processed, an endorsed copy of the order appointing the claimant must be attached to the claim form.

**c. Submission for Signature.** Each claim for payment should be submitted to the court accountant, who will submit the claim for signature to the judge who made the appointment. Once the judge signs the order statement, the claim will be processed by the court accountant.

**d. Time Limit for Submitting Claims.** Attorneys, investigators and expert witnesses appointed by the court shall file a claim for payment no more

than thirty (30) days after rendering their services. Claims submitted beyond forty-five (45) days will require a separate declaration explaining to the court that the delay was unavoidable. Claims submitted forty-five (45) days beyond the fiscal year end may not be paid.

Consistent failure to provide timely claims will be considered by the court in future appointments.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

## CLAIM FORM

**NAME AND ADDRESS OF VENDOR**

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**FOR SUPERIOR COURT USE ONLY**

**Budget Unit:** \_\_\_\_\_

**Acct. No.** \_\_\_\_\_

\_\_\_\_\_  
Invoice No.

*I hereby certify that the service and costs described  
in the attached invoice have been performed and  
incurred on the dates set forth and that no prior  
claim has been made for the same.*

\_\_\_\_\_  
Signature of Claimant

**CASE NAME:** \_\_\_\_\_ **CASE NO.** \_\_\_\_\_

It is hereby ordered that the County of Mendocino, through the Auditor of the  
County, compensate the above names person for the total due for services  
rendered and costs incurred in the sum of \$\_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

Invoice No. \_\_\_\_\_

**SAMPLE BILLING****PERIOD OF BILLING:** 6/1/98 through 8/4/98**WORK DONE BY:** S. Holmes, P.I.; and T. Sleuth, Assistant.**(IF AUTHORIZED IN ADVANCE):**      **INTERIM BILLING NO. 1**

| <u>Date</u> | <u>Services Rendered</u>   | <u>Hours</u> |
|-------------|--|--------------|
| 1/5/91      | Initial conference w/Atty Rumpole  | 0.5          |
|             | Reviewed arrest reports  | 1.2          |
| 1/6/91      | Travel to/from Covelo  | 2.5          |
|             | Interviewed witness Garcia   | 1.0          |
|             | Interviewed witness Azbill   | 0.2          |
| 1/7/91      | Atty conference to discuss results of<br>witness interviews  | 0.6          |
|             | Local travel to interview witnesses  | 0.3          |
|             | Interviewed witness Byrd at jail, Ukiah  | 1.5          |
| 1/15/91     | Reviewed supplemental police report  | 0.2          |
|             | Additional conference w/Atty Rumpole<br>(JUSTIFICATION: To discuss witnesses'<br>testimony at upcoming PX) | 1.3          |
| 1/22/91     | Local travel (by T.S.)   | 0.2          |
|             | Photo/diagram crime scene (T.S.)   | 2.5          |
| 2/5/91      | Travel, Ukiah/Covelo round-trip  | 2.5          |
|             | Subpoena wit's Garcia and Azbill (T.S.)  | 0.9          |
| 2/15/91     | Time spent waiting to testify and in<br>testifying at PX (T.S.)  | 2.5          |
|             | <b>TOTAL HOURS BILLED:</b>   | <b>19.9</b>  |

**19.9 HOURS AT \$30/HOUR:**

**\$597.00**

**EXPENSES:**

Mileage, 2 round-trips to Covelo  
(240 miles); local travel (16 miles)  
256 miles @ \$0.30/mile

\$ 76.80

Negatives and prints, camera store  
(receipt attached)

19.95

**TOTAL BILLING:**

**\$693.75**

**CERTIFICATION**

I hereby certify as follows:

1. The attached statement is true and correct and all services described therein were actually performed by myself and my assistant, T. Sleuth, as noted therein.
2. I have received no compensation for such services from any other source.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate was executed at Ukiah, California on, \_\_\_\_\_.

\_\_\_\_\_  
S. Holmes, P.I.

*(Amended effective 7/1/04; adopted effective 1/1/99.)*

## **CHAPTER 20. COURT REPORTERS AND INTERPRETERS**

### **20.1 Court Reporters – Civil Proceedings and Felony Criminal Proceedings**

A court reporter shall report the following court proceedings (including trial) when contested or uncontested:

- a.** Civil jury and court trials.
- b.** Felony criminal proceedings (including preliminary hearings, other pretrial motions, and court or jury trials).
- c.** Juvenile proceedings.
- d.** Any court proceeding when ordered by the court.
- e.** Any other proceeding when a party requests a court reporter in accordance with rule 20.2 of the Local Rules.

*(Adopted effective 1/1/99.)*

### **20.2 Requests for Court Reporter**

In accordance with Government Code section 68086 and California Rules of Court, rule 891, when a party requests a court reporter and the reporter is not required by rule 20.1 of the Local Rules or by statute to report the court proceeding, such party shall provide and pay for a certified court reporter approved by the court.

*(Adopted effective 1/1/99.)*

### **20.3 Reporter Fees - Civil Proceedings**

All civil proceedings, including family law proceedings, of less than one hour in duration will be reported without costs to any party. A fee for reporting services shall be charged for all matters lasting more than one hour.

*(Adopted effective 1/1/99.)*

### **20.4 List of Approved Interpreters**

The court executive officer shall maintain for public examination a list of court approved interpreters and their particular languages. An interpreter will be approved for inclusion upon the list only after the interpreter's competency has been satisfactorily demonstrated to the court by such examination or other means as this court shall require.

*(Adopted effective 1/1/99.)*

### **20.5 Requests for Interpreters; Deposits of Fees**

In civil cases a party who requests an interpreter shall at least ten (10) court days before the date of trial or hearing notify the court executive officer in writing of such request and of the

particular language needed and shall pay to the clerk of court one day's fee. Thereafter one day's fees shall be advanced to the interpreter before the commencement of each day's proceedings. Failure by a party to make such a written request to the court executive officer or to advance such fee to the clerk shall be deemed a withdrawal of the request and the court in its discretion may proceed without an interpreter or upon terms as may be just with an interpreter.

*(Adopted effective 1/1/99.)*

## **20.6 Fee of Interpreters**

Except as otherwise provided by order of the court the per diem fee for interpreters shall be the maximum amount allowable by statute at the time the interpreter services are provided.

*(Adopted effective 1/1/99.)*

## **20.7 Forfeiture of Fee Deposit**

In a civil case in which a party requests an interpreter and thereafter withdraws such request, the party shall pay one day's fee to the interpreter unless; (1) the party notifies the court executive officer at least forty-eight (48) hours in advance of the date of trial or hearing that the services of the interpreter will not be required; or (2) the interpreter has a similar service to perform at that time in some other proceeding.

*(Adopted effective 1/1/99.)*

## **20.8 Court Interpreters - Criminal and Juvenile Matters**

- a. Notice to the Court.** In adult criminal matters, the court shall be notified in writing no less than three (3) court days prior to a hearing that the services of an interpreter is needed. Said notice shall be directed to the court executive officer. It shall include the court number, type of interpreter and whether the service is for a parent, witness, defendant or child.
- b. Responsibility for Notice.** The attorney for the People (District Attorney or Attorney General) is responsible to provide the notice for all criminal defendants. The party calling any witness in need of an interpreter is responsible to provide notice. The probation officer is responsible to provide notice for any juvenile delinquency matters and the child protective services shall make notice for juvenile dependency matters. Said notice on juvenile matters shall be made prior to filing the petition.

*(Adopted effective 1/1/99.)*

## CHAPTER 21. TRIAL JURY SERVICES

### 21.1 Jury Commissioner Duties

The court hereby delegates to the Jury Commissioner on a continuing basis and subject to further order of the court the court's authority granted pursuant to section 196 of the Code of Civil Procedure. Whenever the business of the courts shall require the attendance of a trial jury, the jury commissioner shall direct that a trial jury venire be drawn and summoned to attend before the court in such a number and at such a time as shall be appropriate for the conduct of the trials for which juries are required.

*(Adopted effective 1/1/99.)*

### 21.2 Jury Services

Jury service, unless excused by law, is a responsibility of citizenship. It is the court's obligation to employ all necessary and appropriate means to assure that citizens fulfill this important civic function.

*(Adopted effective 1/1/99.)*

### 21.3 Court Policy

The court recognizes that jury duty should not impose an undue hardship and in selecting prospective jurors the court guided by the following principles:

- a. No class or category of persons should be automatically excluded from jury duty except as provided by law.
- b. A statutory exemption from jury service should be granted only when the eligible person claims it.
- c. Deferring jury service should be preferred to excusing a prospective juror for a temporary or marginal hardship.
- d. Inconvenience to a prospective juror or an employer is not an adequate reason to be excused from jury duty, although it may be considered a ground for deferral.

*(Adopted effective 1/1/99.)*

### 21.4 Requests to be Excused

Local Rules for the Mendocino Superior Court – Trial Jury Services



All requests to be excused from jury service that are granted for undue hardship should be in writing from the prospective juror, reduced to writing, or placed on the court's records. The prospective juror should support the request with facts specifying the hardship and a statement why the circumstances constituting the undue hardship cannot be avoided by deferring the prospective juror's service.

*(Adopted effective 1/1/99.)*

## **21.5 Grounds Constituting Undue Hardship**

The policy adopted pursuant to rule 21.3 of the Local Rules should specifically provide that an excuse on the ground of undue hardship may be granted for any of the following reasons:

- a.** No reasonable available means of transportation.
- b.** Excessive travel distance to the court.
- c.** Extreme financial burden.
- d.** Undue risk of material injury or destruction of property.
- e.** Undue risk of mental or physical harm.
- f.** The prospective juror's services are immediately needed for the protection of public health and safety.
- g.** Personal obligations to provide essential care to others.

*(Adopted effective 1/1/99.)*

## **21.6 Prior Jury Service**

A prospective juror who has served on a grand or trial jury or was summoned and appeared for jury service in any state or federal court during the immediately preceding 12 months, or any longer period as the court determines appropriate, should be excused from service on request.

*(Adopted effective 1/1/99.)*

## **21.7 Failure to Appear for Jury Duty When Summoned**

**Local Rules for the Mendocino Superior Court – Trial Jury Services**

A prospective juror, who fails to appear for jury duty when summoned, or otherwise contact the court, shall be immediately resummoned and provided with a new appearance date. Any prospective trial juror who has been resummoned for service, and fails to attend upon the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend; and following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

*(Adopted effective 1/1/99.)*

## **21.8 Releasing Names and Addresses of Jurors**

The jury commissioner will release the names and addresses of prospective or trial jurors only upon authorization of the trial or presiding judge, and presentation of a signed court order releasing said information.

*(Adopted effective 1/1/99.)*

## **21.9 Records Compiled and Maintained**

All records and papers compiled or maintained by the jury commissioner in connection with the selection or service of a juror shall be preserved for three years after the list used in their selection is prepared or for any longer period ordered by the court or the jury commissioner.

*(Adopted effective 1/1/99.)*

## **21.10 Jurors for Sessions Held Outside the County Seat**

If a session of the superior court is held in a location other than the county seat, the names for the master jury lists and qualified jury lists to serve in that session may be selected from the area in which the session is held, provided that all qualified persons in the county have an equal opportunity to be considered for jury service.

*(Adopted effective 1/1/99.)*

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## CHAPTER 22. COURT EXECUTIVE OFFICER

### 22.1 Duties of Court Executive Officer

A majority of the judges may appoint a Court Executive Officer who shall serve as Clerk of the Court.

Pursuant to the authority granted the court by rule 6.610 of the California Rules of Court, the executive officer under the direction of the presiding judge:

- a. *(Personnel)* Provide General direction to and supervision of the employees of the court, and draft for court approval and administer a personnel plan for court employees that comply with rule 6.650 of the California Rules of Court. The court executive officer has the authority, consistent with the personnel plan, to hire, discipline, and terminate non-judicial employees of the court.
- b. *(Budgets)* Make recommendations to the presiding judge on budget priorities; prepare and implement court budgets, including accounting, payroll and financial controls; and employ sound budget and fiscal management practices and procedures to ensure that annual expenditures are within the court's budget.
- c. *(Contracts)* Negotiate contracts; on behalf of the court, in accordance with established contracting procedures and all applicable laws.
- d. Supervise and employ efficient calendar and case flow management, including analyzing and evaluating pending caseloads and recommending effective calendar management techniques;
- e. Analyze, evaluate and implement technological automated systems to assist the court;
- f. Manage the jury system in the most efficient and effective way;
- g. Plan physical space needs and purchase and manage equipment and supplies;
- h. Act as a clearinghouse for news releases and other publications for the media and public;
- i. Create and manage uniform record keeping systems, collecting data on pending and completed judicial business and the internal operation of the court, as required by the court and the Judicial Council of California;

- j. Identify problems, recommend procedural and substantive changes to the court;
- k. Act as liaison to other government agencies;
- l. Act as staff for judicial committees; and
- m. Perform other duties as the court directs.

*(Amended effective 1/1/03; adopted effective 1/1/99.)*

## **22.2 County Clerk Powers, Duties and Responsibilities to be Exercised and Performed by the Executive Officer**

In accordance with the provisions of Government Code section 69898, the county clerk is relieved of all obligations imposed by law in connection with judicial actions, proceedings and records, but not limited to the following:

- a. Attend all sessions of the superior court and perform duties and responsibilities of the clerk of the superior court.
- b. The filing, receipt and processing of all documents, pleading, records, minutes, orders and exhibits relating to the court's civil, criminal, mental health, juvenile court, family law, probate, adoption, conservator/guardian, Welfare and Institutions section 300 calendar, appellate and related superior court calendars.
- c. Collection of fees and the processing of all documents, records, motions and pleadings regarding any civil or criminal appeal or writ proceeding.
- d. The preparation of courtroom calendars, dockets, minutes; the processing, filing and entry of court orders, findings and judgments. The entry, service, posting and publication of notice of all orders, judgments, petitions and court related documents. Calendar preparation and management of all programs for vertical case management, complex litigation and automated case management and filing systems.
- e. The issuance of process, notices and summons; entry of defaults; and acceptance for filing of confessions of judgment.
- f. All clerk functions relating to the entry, issuance processing, certification and authentication of orders, judgments, decrees, abstracts of judgment, writs, writs of attachment, writs of execution, citations, summons and subpoenas.

**Local Rules for the Mendocino Superior Court – Court Executive Officer**

**Chapter 22 - 2**

- g.** The preparation and maintenance of a register of action or its alternative, general indexes, plaintiff/defendant indexes in civil actions, defendant indexes in criminal actions and judgment books.
- h.** The acceptance of papers for filing regarding any appeal, the filing of briefs on appeal, the collection of fees for appeals and the preparation of clerk's transcripts on appeal.
- i.** All clerk functions for administering oaths to witnesses and impaneling juries.
- j.** The storage, archiving, microfilming and destruction of all court documents, files records and exhibits.
- k.** Courtroom clerk services, records management, central file room services and archiving.
- l.** The collection, receipt, deposit and accounting of all court filing fees, jury fees, bonds, undertakings, fines forfeitures and revenues relating to court activities.
- m.** The printing, inventory and sale of court forms and rules of court.
- n.** Arrangements for court accommodations, facilities, books, libraries, equipment and supplies.
- o.** Supervision and assignment of the work of staff serving the court in the execution of the court's business.
- q.** Provision of necessary administrative direction in the dispatch of judicial business; management of all personnel functions, facilities, procurement functions relating to the court, court filings, court records and exhibits and record archiving and storage.
- r.** Preparation and administration of all court related budgets; initiation and preparation of special statistical studies; direction of the development and analysis of statistical data.

All functions specified herein shall be performed by the court executive officer.

*(Adopted effective 1/1/99.)*

## **22.3 Duties Delegated to the Executive Officer**

All duties delegated to the court executive officer shall relieve the county clerk of any obligation imposed by law.

*(Adopted effective 1/1/99.)*

## **22.4 Delegation of Duties**

In these rules certain duties are assigned to the court executive officer. The court executive officer may direct that those duties be performed by such subordinate employees as the court executive officer deems appropriate. Subordinate employees may be designated clerks, deputy clerks, finance officer, etc. as the court executive officer in consultation with the court's Executive Committee may direct.

*(Adopted effective 1/1/99.)*

## **CHAPTER 23. ACTIONS ARISING UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT MANDATE ACTIONS UNDER PUBLIC RESOURCES CODE SECTION 21000 ET SEQ. (CEQA)**

### **23.1 Where Filed**

Mandamus actions challenging an agency decision under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) shall be filed in the Civil Division of the Clerk's Office at the Courthouse in Ukiah, California.

*(Adopted effective 7/1/00.)*

### **23.2 Ordering the Administrative Record**

In accordance with Public Resources Code section 21167.6, within ten (10) business days after the action is filed, petitioners shall personally serve on the appropriate public agency their request for preparation of the administrative record or their notice of election to prepare the record themselves.

*(Adopted effective 7/1/00.)*

### **23.3 Mediation**

In accordance with Government Code section 66031, within five days after the deadline for respondent or defendant to file a response to the action, plaintiff or petitioner shall prepare and lodge with the civil and probate department a notice form for the court's signature inviting mediation. The clerk shall then mail the notice of invitation to the parties.

*(Adopted effective 7/1/00.)*

### **23.4 Preparing the Administrative Record**

- a. Preparation by the Public Agency.** Within twenty (20) calendar days after receipt of a request to prepare the administrative record, the public agency responsible for such preparation shall personally serve on petitioners a preliminary notification of the estimated cost of preparation, setting forth the agency's normal costs per page, other reasonable costs, if any, the agency anticipates, and the likely range of pages. This notice shall also state, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, shall designate the contact person(s) responsible for

identifying the agency personnel or other person(s) having custody of those documents, and shall provide a listing of dates and times when those documents will be made available to petitioners or any party for inspection during normal business hours as the record is being prepared. This notice shall be supplemented by the agency from time to time as additional documents are located or determined appropriate to be included in the record.

- b. Upon receipt of this preliminary notification, petitioners may elect to prepare the record themselves provided they notify the agency within five calendar days of such receipt. If petitioners so elect, then within forty (40) calendar days of service of the initial notice to prepare the administrative record, petitioner shall prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within seven calendar days of this notification, the agency and/or other parties shall prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record. The agency shall promptly notify petitioners of any required photocopying procedures and/or conditions with which petitioners must comply in their preparation of the record.
- c. If petitioners do not so elect, then within forty (40) calendar days after service of the request to prepare the administrative record, the agency shall prepare and serve on the parties a detailed index listing the documents proposed by the agency to constitute the record and provide a supplemental estimated cost of preparation. Within seven calendar days of receipt of this notification, petitioners and/or any other parties shall prepare and serve the agency and all parties with a document notifying the agency of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.
- d. **Preparation by Petitioners.** Within twenty (20) calendar days after receipt of petitioners' notice of election to prepare the record themselves, the public agency responsible for certification of the record shall personally serve on petitioners a preliminary notification designating, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and the dates and times when those documents will be made available to petitioners or any party for their inspection and copying. This notice shall also state any required photocopying procedures and/or conditions with which petitioners must comply in their preparation of the record. This notice shall be supplemented by the agency as additional documents are located or determined appropriate to be included in the record. Within forty (40) calendar days after service of petitioners' notice of election, petitioners shall



prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within seven (7) calendar days of this notification, the agency and/or other parties shall prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.

*(Adopted effective 7/1/00.)*

## **23.5 Format of Administrative Record**

- a. Type of Paper.** The administrative record (record) shall be prepared on paper, white or unbleached, of not less than 13-pound weight, 8 1/2 by 11 inches, using a photocopying process that will produce clear and permanent copies legible for printing. Only one side of the paper shall be used and the margin shall be not less than 1 1/4 inches on the left side of the page. Alternatively, original copies of the environmental documents may be lodged as part of the administrative record, provided that original copies are also provided to all parties in the lawsuit. The pages of the administrative record shall be numbered consecutively and bound on the left margin. The use of recycled paper is encouraged.
- b. Volume Designation.** The record shall be provided in one or more volumes of not more than 300 pages per volume, separately bound. The cover of each volume of the administrative record shall be the same size as its pages and contain the same material as the cover of a brief, but shall be prominently entitled "ADMINISTRATIVE RECORD." The first volume of the administrative record shall have at the beginning an index of each paper or record in the order presented in the administrative record referring to each paper or record by title or description and the volume and page at which it first appears.
- c. Organization.** The record in all matters other than Timber Harvest Litigation should be organized with the following documents (as applicable) at the front of the record, in the following order:

  - 1.** The Notice of Determination.
  - 2.** The resolution(s) or ordinance(s) adopted by the lead agency approving the project, including any resolution(s) or ordinance(s) adopted in compliance with Public Resources Code sections 21081 and 21081.6.
  - 3.** The draft or revised draft Environmental Impact Report and initial study.

4. The comments received on and the responses to those comments prepared for the draft Environmental Impact Report or Negative Declaration, including any modifications to the environmental documents and project made after the comment period.
5. The remainder of the final Environmental Impact Report (e.g., the technical appendices and other technical materials).
6. The staff reports prepared for the approving bodies of the lead agency.
7. Transcripts and/or minutes of hearings.
8. The remainder of the administrative record, preferably in chronological order.

The record in Timber Harvest Litigation should be organized with the following documents (as applicable) at the front of the record, in the following order:

1. The Timber Harvest Plan.
2. Amendments and other correspondence relative to the Timber Harvest Plan.
3. The Pre Harvest Inspection minutes and agency review letters.
4. The Official Response.
5. The notice of conformance.
6. Timely public comment letters.
7. Letters received after the close of the public comment period.

This listing of documents is not intended to dictate the content of the record, but instead is intended to describe a uniform order for documents typically contained in a record. The lead agency is encouraged to use tabs to separately identify each of these portions of the record. The parties are referred to Public Resources Code section 21167.6(e) as to what the record should contain.

*(Amended effective 1/1/03; adopted effective 7/1/00.)*

## 23.6 Certifying and Lodging the Record

Upon completion of preparation of the record, it must be certified by the agency before it is filed with the court. If the agency has prepared the record, it shall make such certification and shall personally serve and lodge the record in the appropriate court department no later than sixty (60) days after the request. If the petitioners have elected to prepare the record, petitioners must transmit it to the agency for certification. After such certification, petitioners shall then personally serve and lodge the record in the appropriate court department no later than sixty (60) days after service of the notice of election to prepare. If the agency refuses to make a complete certification, it shall make a partial certification, specifying any alleged defects in the record. Any extension of the 60-day time period may be obtained by filing a stipulation of the parties and obtaining court approval of the extensions prior to the expiration of the 60-day period. Also, an extension may be obtained from the court upon a properly noticed hearing scheduled prior to the expiration of the 60-day period.

*(Adopted effective 7/1/00.)*

## 23.7 Disputes

**Regarding the Contents of the Administrative Record:** Once the administrative record has been filed, any disputes about its accuracy or scope should be resolved by appropriate noticed motion. For example, if the agency has prepared the administrative record, petitioners may contend that it omits important documents or that it contains inappropriate documents; if the petitioners have prepared the record, the agency may have similar contentions. A motion to supplement the certified administrative record with additional documents and/or to exclude certain documents from the record may be noticed by any party and should normally be filed concurrently with the filing of petitioners opening memorandum of points and authorities in support of the writ. Opposition and reply memoranda on the motion should normally be filed with the opposition and memoranda, respectively; regarding the writ, the motion should normally be calendared for hearing concurrently with the hearing on the writ.

*(Adopted effective 7/1/00.)*

## 23.8 Notice of Hearing

The petitioner shall notice a hearing date on the petition for writ of mandate consistent with Public Resources Code section 21167.4. The hearing shall be noticed for not later than 160 days from the date of filing the petition.

*(Adopted effective 7/1/00.)*

## 23.9 Briefing Schedule and Length of Memoranda

- a.** Unless otherwise ordered by the court, petitioner shall file and serve personally, by overnight mail or, if previously agreed, by fax, an opening memorandum of points and authorities in support of the petition within thirty (30) days from the date the administrative record is served.
- b.** Respondent and Real Party in Interest shall file and serve personally, by overnight mail or, if previously agreed, by fax, opposition points and authorities, if any, within thirty (30) days following service of petitioner's memoranda of points and authorities.
- c.** Petitioner shall have twenty (20) days from service of the opposition's points and authorities to file and serve personally, by overnight mail or, if previously agreed, by fax, a reply memorandum of points and authorities.
- d.** The parties may agree upon a shorter time frame for briefing by written stipulation filed with the court.
- e.** Any request for permission to file a memorandum in excess of the 15-page limit shall be made pursuant to rule 313(d), California Rules of Court.

*(Adopted effective 7/1/00.)*

### **23.10 Settlement Meeting**

The initial notice required by Public Resources Code section 21167.8 shall provide that, if the parties agree, the first meeting will be continued so as to take place no later than thirty-five (35) days after the administrative record is served. If the parties do not agree to this continued first meeting date, then the first meeting shall take place in accordance with Public Resources Code section 21167.8 and a second meeting is ordered to take place within five (5) days after the administrative record is served. The parties shall agree as to the time and place of any meeting pursuant to Public Resources Code section 21167.8. Other meetings may be scheduled by the parties. The statement of issues required by Public Resources Code section 21167.8(f), shall identify those portions of the administrative record that are directly related to the contentions and issues remaining in controversy. The court will utilize these statements in focusing on the legal and factual contentions and issues to be resolved. However, such contentions and issues must be consistent with the pleadings to be properly resolved by the court.

*(Adopted effective 7/1/00.)*

### **23.11 Trial Notebook**

Petitioner shall prepare a trial notebook which shall be filed with the appropriate trial department no later than five (5) days before the date of the hearing. The trial notebook shall consist of the petition, the answer(s), the briefs, any motions set to be heard at trial, the statement of issues, and any other document(s) agreed upon by the parties.

*(Adopted effective 7/1/00.)*

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## **CHAPTER 24 – APPELLATE DEPARTMENT**

### **24.1 Assignments**

The Presiding Judge of the Superior Court will recommend to the Presiding Judge of the California Supreme Court the assignment of a judge to act as the Presiding Judge of the Appellate Department.

*(Adopted effective 7/1/04)*

### **24.2 Regular & Special Sessions**

Regular sessions of the Appellate Department of the Superior Court, County of Mendocino, shall be held on the fourth Friday of each calendar month in the Courtroom of the Presiding Judge of the Appellate Department or as designated. Special sessions shall be held at the call of the Presiding Judge of the Appellate Department.

*(Adopted effective 7/1/04)*

### **24.3 Oral Argument**

Unless otherwise ordered, counsel for each party shall be allowed no more than fifteen (15) minutes for oral argument. The appellant or the moving party shall have the right to open and close.

*(Adopted effective 7/1/04)*

### **24.4 Briefs**

Each party must file with the Clerk of the Court an original brief with four (4) copies. Briefs shall be prepared, served and filed as provided in Rule 105, California Rules of Court.

*(Adopted effective 7/1/04)*

### **24.5 Calendar & Notice or Hearing**

An appeal to the Appellate Department shall be calendared for hearing and notice thereof given by the Master Calendar Clerk as provided by Rule 103, California Rules of Court. In its discretion, the Appellate Department may employ the tentative ruling procedure specified in Rule 9.14, upon notice to all parties.

*(Adopted effective 7/1/04)*

## **24.6 Motions**

All motions shall be heard at regular sessions, unless a different time for the hearing of a particular motion is designated by the Presiding Judge of the Appellate Department. Motions will be filed with an original and four copies. Any request that the court take Judicial Notice of a document must have a copy of that document attached.

*(Adopted effective 7/1/04)*

## **24.7 Dismissal**

An appeal shall be subject to dismissal by the court, at its discretion, on the grounds stated in Rules 133 and 190, California Rules of Court. Failure to file a trial brief or an adequate appellate record within the times specified may be considered a want of diligence warranting dismissal.

*(Adopted effective 7/1/04)*

## **24.8 Misdemeanor, Traffic and Limited Civil Court Records**

If a party wishes to argue the evidence, testimony or oral proceedings held in the Municipal Court, he or she must designate either:

- (a) Court reporter's transcript, which in criminal cases may be used only as part of the settled statement;
- (b) A settled statement; or
- (c) In civil cases, an agreed statement.

Otherwise, the parties will be limited to issues, which appear on the face of the Judgment Roll.

*(Adopted effective 7/1/04)*

## **24.9 Use of Recordings to Facilitate Settlement of Statements**

California Rules of Court, Rule 187.5 shall apply to every appeal in a misdemeanor case in which all or part of the proceedings was officially recorded electronically.

*(Adopted effective 7/1/04)*

## **CHAPTER 25 – EMERGENCIES AND EVACUATIONS**

The Mendocino County Sheriff’s Department shall serve as the Court Security Officer and be responsible for the welfare and security of all building occupants in the superior Court Courthouse facilities. All Superior Court Judges, Commissioners, and staff shall follow the directions of the Court Security Officer in the event of an emergency and/or evacuation.

The Mendocino County Court Security Officer shall have the sole authority to order an evacuation, when necessary, as authorized under Penal Code Section 409.5. Penal Code Section 409.5 authorizes the Security Officer to evacuate and close an arena “Whenever a menace to the public health or safety is created by a calamity such as flood, storm, fire, earthquake, explosion, accident, or other disaster...” as provided in Penal Code Section 409.5 (c): “Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision 9a) or (b) and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.”

*(Adopted effective 7/1/04)*



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## **Rule 26. PHOTOGRAPHING OR RECORDING COURT PROCEEDINGS**

Photographing, videotaping, televising, or otherwise recording any court proceeding is prohibited unless a written request has been filed and approved prior to the commencement of the proceeding.

*(Adopted effective 7/1/04.)*

### **26.1 Media Coverage**

The media may request an order permitting media coverage using only the approved Judicial Council of California form MC-500, Media Request to Photograph, Record, or Broadcast, and form MC-510, Order on Media Request to Permit Coverage. Blank forms are available in the clerk's office. The judge shall retain sole discretion for the approval or denial of any such request.

The forms shall be filed with the Clerk's Office in the division of the Court where the request is directed at least five (5) court days before the portion of the proceeding to be covered unless good cause is shown. A completed, proposed order on the approved form shall be filed with the request. The Clerk's Office will immediately deliver the request to the assigned judge who will rule on the request. If no judge has been assigned, the request will be submitted to the judge supervising the calendar department, and thereafter be ruled upon by the judge assigned to the proceeding. The clerk shall promptly notify the parties that a request has been filed. Rule 980(e)(1).

Each media agency shall be responsible for ensuring that all its media personnel who cover the court proceeding know and follow the provisions of the court order and California Rule of Court, Rule 980(e)(4).

If the request is approved, the judge may specify the placement of media personnel and equipment to permit reasonable media coverage without disruption of the proceedings. Unless the judge in his or her discretion and for good cause orders otherwise, the following rules shall apply: Rule 980(e)(7).

1. One still photographer shall be permitted.
2. The equipment shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible.
3. Equipment shall be operated by one person.

4. Operators shall not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction.
5. Equipment or clothing of media personnel shall not bear the insignia or marking of a media agency.

*(Adopted effective 7/1/04.)*

## **26.2 Filming Jurors**

Photographing and filming any juror or summoned prospective juror is prohibited.

*(Adopted effective 7/1/04.)*

## **26.3 Media Coverage In Other Areas Of Courthouse**

Unless approved by written order of the Presiding Judge, filming, videotaping, photographing and electronic recording of any kind is not permitted in any other part of the courthouse, including but not limited to, entrances, exits, halls, stairways, and elevators. Application for permission for media coverage in these areas of the courthouse shall be directed to the Presiding Judge on the form provided for by these rules.

Cameras and recording devices shall be turned off while being transported in any area of the court unless expressly permitted by court order. Filming, video taping and photographing of the interior of any courtroom through the glass door windows or through the double doors, or otherwise is prohibited. No microphones or cameras shall be permitted in any courtroom unless the judge hearing a matter within the courtroom has expressly authorized such use in a written order pursuant to California Rule of Court 980 and the local rules of this court.

*(Adopted effective 7/1/04.)*

## **26.4 Violations**

Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings of the court and may be the basis for an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions as provided by law. Rule 980(f).

*(Adopted effective 7/1/04.)*

## CHAPTER 27: MISCELLANEOUS

### 27.1 Check Cashing

**a. Acceptance.** The Clerk shall accept a personal check, cashier's check, or postal money order offered in payment of any fee, fine or bail deposit provided the following conditions are met:

1. The name of the customer must be imprinted on the check;
2. The personal check is drawn on a banking institution located within the United States;
3. The amount of any such payment shall not exceed the face amount;
4. No post-dated checks or stale-dated checks shall be accepted;
5. All instruments shall be made payable to the "Mendocino County Superior Court" or other similar designee (no two-party checks);
6. The numeric figures on the check shall agree with the amount written in words; and
7. The sum shall be payable in U.S. currency.

**b. Refusal.** Personal checks shall be refused from persons known to have previously tendered worthless or "Not Sufficient Funds" checks to the Clerk or other persons.

**c. Insufficient Funds Checks.** Pursuant to Penal Code §476(a), insufficient funds checks (worthless documents) received by the Court may be referred either to the District Attorney for prosecution, or Central Collections Office for enforcement.

*(Amended effective 1/1/07; adopted effective 7/1/05)*

### 27.2 Payment in Coins

Pursuant to Government Code §24353, the Clerk shall not accept coins as payment of any bail, fee or fine in amounts exceeding: one dollar consisting of pennies, nickels and dimes; and ten dollars consisting of dimes, quarters and half dollars.

*(Adopted effective 7/1/05)*

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